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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1948

No. 51

RAILWAY EXPRESS AGENCY, INC., CHARLES GERCHARIO, MICHAEL LONG, ET AL., APPELLANTS,

vs.

PEOPLE OF THE STATE OF NEW YORK

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

FILED MAY 4, 1948.

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN COURT OF APPEALS OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, Plaintiff-Respondent,

against

RAILWAY EXPRESS AGENCY, INC., Defendant-Appellant

PEOPLE OF THE STATE OF NEW YORK, Plaintiff-Respondent,

against

CHARLES GERCHARIO, MICHAEL LONG, and 11 others, Defendants-Appellants

STATEMENT ON APPEAL

These are appeals by the defendants to the Court of Appeals pursuant to permission granted by Hon. John T. Loughran, Chief Judge of the Court of Appeals, on the 18th day of February, 1947, from the orders of the Court of Special Sessions of the City of New York, Appellate Part, First Judicial Department, dated the 21st day of January, 1947, affirming the judgments of conviction of the defendants in the Traffic Court of the City Magistrate's Court of the City of New York, on the 28th day of March, 1946, [fol. 2] with respect to the defendants Charles Gerchario, Michael Long, and 11 others, and on the 2nd day of July, 1946, with respect to defendant Railway Express Agency, Inc., on a charge of violating Article 9, Section 124 of the Traffic Regulations of the City of New York.

The defendants Charles Gerchario, Michael Long, and 11 others were in the employ of defendant Railway Express Agency, Inc., operating its vehicles when charged with violating Article 9, Section 124 of the Traffic Regulations of the City of New York.

All of the defendants are represented by Davis Polk Wardwell Sunderland & Kiendl, and the Corporation Counsel of the City of New York, appears for the People of the State of New York plaintiff.

There has been no change in parties or their attorneys except that on the 1st day of January, 1947, Charles E. Murphy succeeded to and in place of John J. Bennett, as Corporation Counsel of the City of New York.

[fol. 3] In City Magistrate's Court of the City of New York

Traffic Court—Borough of Manhattan

People of the State of New York on the Complaint of George W. Horner, Plaintiff,

against

Railway Express Agency, Inc., Defendant

Notice of Appeal to the Court of Special Sessions, Appellate Part, First Department

Sirs:

Please take notice that the defendant herein appeals to the Appellate Part of the Court of Special Sessions held in and for the First Judicial Department from the judgment convicting it of a violation of Section 124 of Traffic Regulations adopted by the Police Commissioner of the City of New York, and sentencing it to a fine of $25 rendered in the Magistrates Court of the City of New York, Traffic Court, Borough of Manhattan, by Hon. Morris Rothenberg, on the 2nd day of July, 1945.

The grounds for taking this appeal are as follows:

1. That the acts proved by the People did not as a matter of law or of fact constitute a violation of said §124.

[fol. 4] 2. That said §124, correctly interpreted, permits the carrying of business notices of the defendant and others upon the business delivery vehicles of the defendant described in the information in that such vehicles were engaged in the usual business or regular work of the defendant and were not used merely or mainly for advertising.

3. That under the construction put upon said §124 by the Magistrate it is arbitrary, unreasonable and void and exceeds the powers delegated by the State of New York to the City and the Police Commissioner.

4. That under the construction put upon said §124 by the Magistrate its violates the rights of the defendant under the Fourteenth Amendment of the United States Constitution and Article I, Section 6, of the Constitution of the State of New York.

5. That the business delivery vehicles of the defendant (including those described in the information) using the streets of the City of New York preponderantly carry goods in interstate commerce and that the construction of said §124 by the Magistrate constitutes an undue burden upon interstate commerce and exceeds the police power of the City of New York.

6. That under the construction put upon said §124 by the Magistrate it deprives defendant of the equal protection of the laws in violation of the Fourteenth Amendment of [fol. 5] the United States Constitution and Article I, Section 11 of the Constitution of the State of New York.

7. That if said §124 was correctly interpreted by the Magistrate to deprive defendant of revenue from carrying the business notices of others on defendant's delivery vehicles engaged in the usual business or regular work of the defendant and not used merely or mainly for advertising, the Police Commissioner of the City of New York in promulgating said §124 has exceeded the powers granted to him by §435 of the Charter of the City of New York.

8. That the Magistrate erred in refusing to grant defendant's motion to dismiss on the law at the close of the People's case.

9. That the Magistrate erred in excluding evidence tendered by the defendant as shown by the stenographic transcript.

10. That the Magistrate erred in convicting the defendant of a violation of said §124.

[fol. 6] Dated, July 27, 1945.

Davis, Polk, Wardwell, Sunderland & Kiendl, Attorneys for defendant, Railway Express Agency, Inc., 15 Broad Street, New York 5, N. Y.

To:

The Clerk of the Appellate Part of the Court of Special Sessions.
The Chief City Magistrate.
The Chief Clerk of the Magistrate's Court.
The District Attorney, New York County.
The Corporation Counsel of the City of New York.
Clerk of the Traffic Court, 455 West 151st Street, Borough of Manhattan, New York, N. Y.

[fol. 7] IN CITY MAGISTRATE'S COURT OF THE CITY OF NEW YORK

TRAFFIC COURT—BOROUGH OF MANHATTAN

PEOPLE OF THE STATE OF NEW YORK, Plaintiff,

against

CHARLES GERCHARIO, MICHAEL LONG, and 11 others;
Defendants

NOTICE OF APPEAL TO THE COURT OF SPECIAL SESSIONS, APPELLATE PART, FIRST DEPARTMENT

SIRS:

Please take notice that the defendants herein appeal to the Appellate Part of the Court of Special Sessions held in and for the First Judicial Department from the judgment convicting each of them of a violation of Section 124 of Traffic Regulations adopted by the Police Commissioner of the City of New York, and sentencing each of them to a fine of $5 rendered in the Magistrate's Court of the City of New York, Traffic Court, Borough of Manhattan, By Hon. Raphael A. Koenig, on the 28th day of March, 1946.

The grounds for taking this appeal are as follows:

1. That the acts proved by the People did not as a matter of law or of fact constitute a violation of said §124.

[fol. 8] 2. That said §124, correctly interpreted, permits the carrying of business notices upon the business delivery vehicles (described in the information) operated by the defendants in the course of their regular employment in that such vehicles were engaged in the usual business or regular business of the defendants' employer and were not used merely or mainly for advertising.

3. That under the construction put upon said §124 by the Magistrate it is arbitrary, unreasonable and void and exceeds the powers delegated by the State of New York to the City and the Police Commissioner.

4. That under the construction put upon said §124 by the Magistrate it violates the rights of the defendants under the Fourteenth Amendment of the United States Constitution and Article I, Section 6, of the Constitution of the State of New York.

5. That the business delivery vehicles operated by the defendants (including those described in the information) using the streets of the City of New York preponderantly carry goods in interstate commerce and that the construction of said §124 by the Magistrate constitutes an undue burden upon interstate commerce and exceeds the police power of the City of New York.

6. That under the construction put upon said §124 by the Magistrate it deprives the defendants of the equal protection of the laws in violation of the Fourteenth Amend-
[fol. 9] ment of the United States Constitution and Article I, Section 11 of the Constitution of the State of New York.

7. That if said §124 was correctly interpreted by the Magistrate to deprive defendants' employer of revenue from carrying the business notices of others on the delivery vehicles operated by the defendants while such vehicles and the defendants were engaged in the usual business or regular work of their employer and not used merely or mainly for advertising, the Police Commissioner of the City of New York in promulgating said §124 has exceeded the powers granted to him by §435 of the Charter of the City of New York.

8. That the Magistrate erred in refusing to grant defendants' motion to dismiss on the law at the close of the People's case.

9. That the Magistrate erred in excluding evidence tendered by the defendants as shown by the stenographic transcript.

10. That the Magistrate erred in convicting the defendants of a violation of said §124.

[fol. 10] Dated, April 12, 1946.

Davis, Polk, Wardwell, Sunderland & Kiendl, Attorneys for Defendants, Office and Post Office Address: 15 Broad Street, New York 5, New York.

To:

The Clerk of the Appellate Part of the Court of Special Sessions.

The Chief City Magistrate.

The Chief Clerk of the Magistrate's Court.

The District Attorney, New York County.
The Corporation Counsel of the City of New York.
The Clerk of the Traffic Court, 455 West 151st Street, Borough of Manhattan, New York, N. Y.

[fol. 11] IN CITY MAGISTRATES' COURT, CITY OF NEW YORK

TRAFFIC DISTRICT BOROUGH OF MANHATTAN, COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

vs.

RAILWAY EXPRESS AGENCY, INC.

MAGISTRATES RETURN ON APPEAL

[fol. 1] Officer George W. Horner.

Violation of Article 9, Section 124, of the Traffic Regulations of the City of New York, under Section 435 of the Charter.

Railway Express Agency, Inc.

Morris Rothenberg,

Return is herewith made to appeal taken on the 30th day of July, 1945, from the judgment of conviction in the above entitled case.

The defendant was arraigned before me at the Traffic Court, Borough of Manhattan, on the 29th day of June, 1945, on the affidavit and complaint of George W. Horner, a member of the Police Department of the City of New York, assigned to Traffic D, charging the defendant with violation of Art. 9, Sec. 124, of the Traffic Regulations of the City of New York, under Sec. 435 of the Charter, which reads as follows:

> "Section 124. Advertising Vehicles. No person shall operate, or cause to be operated, in or upon any street an advertising vehicle; provided that nothing herein contained shall prevent the putting of business notices upon business delivery vehicles, so long as such vehicles are engaged in the usual business or regular work of

the owner and not used merely or mainly for advertising."

[fol. 13] The complainant states in his complaint,

1. That on the 2nd day of May, 1945, the defendant Railway Express Agency, Inc., did violate Article 9, Section 124, of the Traffic Regulations, adopted by the Police Commissioner of the City of New York, under authority of Section 435 of the New York City Charter, in that the defendant, as owner of a certain motor vehicle bearing license No. 290413, N. Y., did cause and permit such vehicle to be operated as an advertising vehicle upon the streets of the City of New York, to wit, at or near 152 East 34th Street, Borough of Manhattan, City of New York, at or about 12:30 P. M., which was driven by one Christopher Dunn, an employee of the defendant engaged in its business; that said truck had on one side thereof a sign advertising Ringling Bros. & Barnum & Bailey Circus, which sign was approximately 4 feet by 10 feet, and on the other side had a sign advertising the motion picture "Without Love", which sign was approximately 4 feet by 10 feet, and that neither sign was a business notice of the defendant but represented advertising in no way pertaining to defendant's business.

2. That on the 2nd day of May, 1945, the defendant Railway Express Agency, Inc., did violate Article 9, Section 124, of the Traffic Regulations, adopted by the Police Commissioner of the City of New York, under authority of Section 435 of the New York City Charter, in that the defendant, as owner of a certain motor vehicle bearing license No. 290,855, N. Y., did cause and permit such vehicle to be [fol. 14] operated as an advertising vehicle upon the streets of the City of New York, to wit, at or near 140 East 43rd Street, Borough of Manhattan, City of New York, at or about 1:15 P. M., which was driven by one Joseph Buckley, an employee of the defendant engaged in its business; that said truck had on one side thereof a sign advertising Camel Cigarettes, which sign was approximately 3 feet by 7 feet, and on the other side had a sign advertising Ringling Bros. & Barnum & Bailey Circus, which sign was approximately 3 feet by 7 feet; and that neither sign was a business notice of the defendant but represented advertising in no way pertaining to defendant's business.

3. That on the 2nd day of May, 1945, the defendant Railway Express Agency, Inc., did violate Article 9, Section 124, of the Traffic Regulations, adopted by the Police Commissioner of the City of New York, under authority of Section 435 of the New York City Charter, in that the defendant, as owner of a certain motor vehicle bearing license No. 291146, N. Y., did cause and permit such vehicle to be operated as an advertising vehicle upon the streets of the City of New York, to wit, at or near 316 East 23rd Street, Borough of Manhattan, City of New York, at or about 1:30 P. M., which was driven by one Harry Hanlon, an employee of the defendant engaged in its business; that said truck had on one side thereof a sign advertising Radio Station WOR, which sign was approximately 4 feet by 10 feet, and on the other side had a sign advertising Ringling Bros. & Barnum & Bailey Circus, which sign was approximately 4 feet by 10 feet, and that neither sign was a business [fol. 15] notice of the defendant but represented advertising in no way pertaining to defendant's business. The defendant was charged with three violations of law.

The defendant, upon arraignment, was informed by the Court of the charge against it and of its rights and privileges under the law. The defendant was represented by Davis, Polk, Wardwell, Sunderland & Kiendl, Esqs., by Ralph M. Carson, Esq., of counsel. The defendant, through its attorney entered a plea of not guilty.

Officer George W. Horner, the complaining witness, testified on behalf of the People and Detectives Joseph V. Prefer, who accompanied Officer George W. Horner, also appeared as a witness on behalf of the People, but on request of the counsel for the People, the counsel for the defendant conceded that Detective Prefer would testify to the same facts and the same things that Officer Horner had testified to, and to save the time of the Court Detective Prefer did not testify. At the conclusion of the People's case counsel for the defendant made a motion to dismiss on the law, but the Court did deny the motion. Witnesses Eliphalet R. Merry, Jr., August Wilkoe, Joseph Buckley, Christopher Dunn, John R. Mara, Harry Hanlon and Otto Brachhold testified on behalf of the defendant. At the conclusion of the testimony of the witnesses, counsel for the defendant requested a few days to submit brief. The Court asked counsel for both sides to submit briefs and adjourned the

case to July 2, 1945, at the Jefferson Market Court, Borough of Manhattan.

[fol. 16]

Briefs were submitted by counsel for both sides and the case came before me for decision on July 2, 1945 at the Jefferson Market Court, Borough of Manhattan. The Court did find the defendant guilty and imposed a fine of $25, which fine was paid under protest by the defendant.

From all the evidence adduced at the trial of this defendant I was convinced beyond a doubt that it was guilty of the offense as charged in the complaint.

Copy of the affidavit and complaint, together with the minutes as taken by the official stenographer, are herewith attached and made a part of this return, all of which is respectfully submitted.

Morris Rothenberg, City Magistrate.

November 16, 1945.

[fol. 17] In City Magistrates' Court, City of New York

Traffic District, Borough of Manhattan, County of New York

The People of the State of New York

vs.

Charles Gercharlo, Michael Long, and 11 others

Magistrates Return on Appeal—

[fol. 18]

Different Police Officers. Violation of Article 9, Section 124 of the Traffic Regulations.

Charles Gercharlo, Michael Long, and 11 others.

Raphael Koenig.

Return is herewith made to an appeal taken on the 16th day of April, 1946 in the above entitled case.

The defendants, Emil Hugo Miller, Charles Arthur Harrington, Frank Reilly, Howard Broems, Edward Halloran, Thomas McCabe, Milton Mulhare, Jeremiah McCarthy, Michael Long, George Bauer, Charles Gerachio, Herman

Gipes and John Murray appeared before the Honorable Anna M. Kross on the 2nd day of January, 1945, at the Traffic Court, Borough of Manhattan, on thirteen complaints, for violation of Article 9, Section 124, of the Traffic Regulations adopted by Police Commissioner under authority of Section 435, New York City Charter, that prohibits Advertising of Vehicles, as stated in affidavits and complaints herewith attached.

The defendants upon their arraignment were informed by the Court of the charges against them and of their rights and privileges under the law. The defendants each entered a plea of not guilty and after several adjournments the defendants appeared before me for trial on [fol. 19] February 28th, 1946 and were represented by Davis, Polk, Wardwell, Sunderland & Kiendl, Esqs., by Ralph M. Carson, Esq. of Counsel. It was agreed by both the prosecution and the defense to try the thirteen defendants as one and that separate judgments be rendered.

Briefs were prepared by the Corporation Counsel and Counsel for the defense and submitted to the Court in advance of the presentation of the evidence.

It was stipulated that the trucks were in operation by the corporation, driven by these defendants and had on the side signs enumerated by the police officers and were also engaged in the business of the corporation, and it was conceded by counsel for the defense that the officers in these cases, if called to testify, would testify that on December 28th, 1944, in front of the different premises located within the City and County of New York, they saw trucks of the Railway Express Agency, Inc., driven by the respective defendants in these cases, and that each of these trucks carried signs on the exterior of the vehicles, displaying things other than Railway Express Agency, Inc.

The Court then informed counsel for each side that after reading the briefs submitted they would be notified when to appear, and the case was adjourned without any particular date being set, the Magistrate to notify both sides.

On March 28th, 1946 the defendants appeared before me for sentence and the defendants were represented by Davis, Polk, Wardwell, Sunderland & Kiendl, Esqs., by Howard S. Tuthill, Esq. of Counsel. After hearing the [fol. 20] argument of counsel the Court did find each defendant guilty and imposed a fine of five dollars in each

case, and adjourned the case to April 1st, 1946 for the payment of the fines.

From all the evidence presented to me I was convinced beyond a reasonable doubt that the defendants were each guilty of the offense as charged in the complaints.

Copies of the affidavits and complaints, together with a copy of the minutes as taken by the official stenographer are herewith attached and made a part of this return, all of which is respectfully submitted.

Raphael P. Koenig, City Magistrate.

November 1, 1946.

[fol. 21] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic Court, Borough of Man.

SUMMONS

CITY OF NEW YORK,
County of New York, ss.:

DENIS F. GALLAGHER, a Patrolman of the Traffic "C" Police Department of the City of New York, being duly sworn, says, that on Dec. 28, 1944, in the County of N. Y., City of New York, the defendant Chares Gerachio, did unlawfully violate Section 124, Article 9, of Traffic Regulations, to wit: "No person shall operate, or cause to be operated, in or upon any street an advertising vehicle: provided that nothing herein contained shall prevent the putting of business notices upon business delivery vehicles, so long as such vehicles are engaged in the usual business or regular work of the owner and not used merely or mainly for advertising."

(Advertising motion pictures on side of vehicle."

in violation of Art. 9, Section 124, of the Traffic Regulations of the City of New York.

Denis F. Gallagher.

Sworn to before me Dec. 28, 1944, Lt. Wm. V. Lawlor, City Magistrate.

[fol. 22] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic Court, Borough of Man.

Docket No. 634

THE PEOPLE OF THE STATE OF NEW YORK ON THE COMPLAINT OF OFFICER

vs.

CHARLES GERACHIO

Def't arraigned January 2, 1946.
Hon. —— ——, City Magistrate.
Gallagher, Officer and Shield No. —, —— ——, Traf. "C" Assignment.
The defendant on being brought before me was informed of the within charge of

Violation of Traffic Reg.

of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid [fol. 23] of counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel.

—— ——, City Magistrate.

Defendant pleads Not Guilty.
Trial begun Feb. 28, 1946.
Trial concluded Mar. 28, 1946.
Deft. found Guilty, Mar. 28/46.

SENTENCE

Fined $5 or in default of payment imprisonment not to exceed 2 days in City Prison. Apr. 2 to pay. Committed to City Prison or Workhouse for —— days.

Raphael Koenig, City Magistrate.

I hereby certify that the within is a True Copy of the record on file.
New York, 4/5, 1946.

Edward F. Duffy, Jr., Clerk.

Fine Paid. Date: Apr. 1, 1946. Amount $5.00.

[fol. 24] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic Court, Borough of Man.

SUMMONS

CITY OF NEW YORK,
County of New York, ss.:

DENIS F. GALLAGHER, a Patroman of the Traffic "C" Police Department of the City of New York, being duly sworn, says, that on Dec. 28, 1944, in the County of N. Y., City of New York, the defendant Michael Long did unlawfully Advertise Motion Pictures on said of vehicle in violation of Art. 9, Sec. 124, Traffic Regulations, "No person shall operate or cause to be operated, in or upon any street an advertising vehicle; provided that nothing herein contained shall prevent the putting of business notices upon business delivery vehicles, so long as such vehicles are engaged in the usual business or regular work of the owner and not used merely or mainly for advertising." in violation of Art. 9, Section 124, of the Traffic Regulations of the City of New York.

Lt. William V. Lawlor.

Sworn to before me, Dec. 28, 1944, —— ——, City Magistrate.

[fol. 25] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic Court, Borough of Man.

Docket No. 632

THE PEOPLE OF THE STATE OF NEW YORK ON THE COMPLAINT OF OFFICER

VS.

MICHAEL LONG

Def't arraigned Jan. 2, 1945.

Hon. —— ——, City Magistrate.

Gallagher, Traf C, Officer and Shield No. —, —— ——, Assignment.

The defendant on being brought before me was informed of the within charge of

of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid [fol. 26] of counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel.

——— ——, City Magistrate.

Defendant pleads Not Guilty.
Trial Begun Feb 28/1946.
Trial concluded Mar 28, 1946.
Deft. found Guilty.

SENTENCE

Fined $5 or in default of payment imprisonment not to exceed 2 day in City Prison. Apr 2 to pay. Committed to City Prison or Workhouse for — days.

Raphael Koenig, City Magistrate.

I hereby certify that the within is a True Copy of the record on file.
New York, 4/5 1946.

Edward F Duffy Jr, Clerk.

Fine paid. Amount $5.00.
Date Apr. 1, 1946.

[fol. 27] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic Court, Borough of Man.

SUMMONS

CITY OF NEW YORK,
County of N. Y., ss.:

ANDREW BENGSTON a Ptl of the Tra "C" Department of the City of New York, being duly sworn, says, that on Dec. 28, 1944, in the County of N Y, City of New York, the defendant Thomas McCabe did unlawfully operate a motor vehicles on 30th St. bet. Mad. Ave. and 4 Ave., displaying not directly connected with their business,
in violation of Art. 9, Part. 124, of the Traffic Reg. of the City of New York.

Andrew Bengston.

Sworn to before me, Dec. 28 1944, Lt. Ben Brady, 15 Pct.

— ——, City Magistrate.

[fol. 28] City Magistrates' Court of the City of New York

Traffic Court, Borough of Man.

Docket No. 629

The People of the State of New York on the Complaint of Ptl. Andrew Bengston

vs.

Thomas McCabe

Def't arraigned Jan. 2, 1945.

Hon. ——, City Magistrate.

Ptl. Bengston, Officer and Shield No. —, Tr "C", ——, Assignment.

The defendant on being brought before me was informed of the within charge of

Violation of Administrative Code

of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid [fol. 29] of counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel.

——, City Magistrate.

Defendant pleads Not Guilty.
Trial begun Feb. 28, 1946.
Trial concluded Mar. 28, 1946.
Deft. found Guilty Mar. 28/46.

Sentence

Fined $5 or in default of payment imprisonment not to exceed 2 day in City Prison. Committed to City Prison or Workhouse for — days. Apr. 2 to pay.

Ralphael Koenig, City Magistrate.

I hereby certify that the within is a True Copy of the record on file.

New York, 4 5 1946.

Edward F. Duffy Jr, Clerk.

Fine Paid. Amount $5.00.
Date Apr 1 46.

[fol. 30] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic Court, Borough of Man.

SUMMONS

CITY OF NEW YORK,
County of New York, ss.:

ANDREW BENGSTON, a Ptl. of the Tfc "C" Department of the City of New York, being duly sworn, says, that on Dec. 28, 1944, in the County of N Y, City of New York, the defendant Milton Mulhare did unlawfully display advertisement signs not directly connected with their business in front of 103 E. 29th St. in violation of Art. 9, Section 124, of the Traffic Reg. of the City of New York.

Andrew Bengston.

Sworn to before me, Dec. 28, 1944. Lt. Ben Brady, 15th Pct.

—— ——, City Magistrate.

[fol. 31] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic Court, Borough of Man.

Docket No. 630

THE PEOPLE OF THE STATE OF NEW YORK ON THE COMPLAINT OF PTL. ANDREW BENGSTON

vs.

MILTON MULHARE

Def't arraigned Jan. 2, 1945.

Hon. —— ——, City Magistrate.

Bengston, Officer and Shield No. —, Traf "C", —— ——, Assignment.

The defendant on being brought before me was informed of the within charge of

Violation of Traf. Reg.

of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid [fol. 32] of counsel at every stage of the proceedings and

before any further proceedings and of his right to an adjournment to procure counsel.

——— ———, City Magistrate.

Defendant pleads Not Guilty
Trial begun Feb 28, 1946.
Trial concluded Mar. 28, 1946.
Deft. found Guilty.

SENTENCE

Fined $5 or in default of payment imprisonment not to exceed 2 day in City Prison. Committed to City Prison or Workhouse for — days. Apr 2 to pay.

Raphael Koenig, City Magistrate.

I hereby certify that the within is a True Copy of the record on file.
New York, 4 5 1946.

Edward F Duffy Jr, Clerk.

Fine Paid. Amount $5.00.
Date Apr 1 46.

[fol. 33] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic Court, Borough of Man.

SUMMONS

CITY OF NEW YORK,
County of New York, ss.:

ANDREW BENGSTON a Ptl of the Trf "C" Department of the City of New York, being duly sworn, says, that on Dec. 28 1944, in the County of N Y, City of New York, the defendant Jeremiah McCarty did unlawfully Display advertisement signs not directly connected with their business in front of 5 E 29 St N Y City

in violation of Art 9, Section 124, of the Traffic Reg. of the City of New York.

Andrew Bengston.

Sworn to before me, Dec. 28, 1944. Lt. Ben Brady, 15th Pct.

——— ———, City Magistrate.

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[fol. 34] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic Court, Borough of Man.

Docket No. 631

THE PEOPLE OF THE STATE OF NEW YORK ON THE COMPLAINT OF ——

vs.

JEREMIAH McCARTY

Def't arraigned Jan. 2, 1945.

Hon. —— ——, City Magistrate.

—— ——, Officer and Shield No. —, —— ——, Assignment.

The defendant on being brought before me was informed of the within charge of

Violation of Traf: Reg.

of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid [fol. 35] of counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel.

—— ——, City Magistrate.

Defendant pleads Not Guilty.
Trial begun Feb 28, 1946.
Trial concluded Mar. 28, 1946.
Deft. found Guilty.

SENTENCE

Fined $5 or in default of payment imprisonment not to exceed 2 day in City Prison. Committed to City Prison or Workhouse for — days. Apr. 2 to pay.

Raphael Koenig, City Magistrate.

I hereby certify that the within is a True Copy of the record on file.
New York, 4/5/1946.

Edward F Duffy Jr, Clerk.

Fine Paid. Amount $5.00
Date Apr 1 '46.

[fol. 36] City Magistrates' Court of the City of New York

Man. Traffic Court, Borough of Manhattan

Summons

City of New York,
County of N. Y., ss.:

Dennis F. Gallagher a patrolman of the Traffic C Police Department of the City of New York, being duly sworn, says, that on Dec. 28, 1944, in the County of N. Y., City of New York, the defendant George Bauer did unlawfully Advertise Motion Pictures on side of vehicle in violation of Art. 9, Sec. 124, Traffic Regulations, "No person shall operate or cause to be operated, in or upon any street an advertising vehicle; provided that nothing herein contained shall prevent the putting of business notices upon business delivery vehicles, so long as such vehicles are engaged in the usual business or regular work of the owner and not used merely or mainly for advertising."

in violation of At. 9, Section 124, of the Traffic Regulations of the City of New York.

Dennis F. Gallagher.

Sworn to before me, Dec. 28, 1944. Lt. Wm. Lawlor.
—— —— City Magistrate.

[fol. 37] City Magistrate's Court of the City of New York

Man. Traf. Court, Borough of Man.

Docket No. 633

The People of the State of New York on the Complaint of Officer

vs.

George Bauer

Def't arraigned Ret. Jan. 2, 1945.
Hon. —— ——, City Magistrate.

Gallagher, Traf. C., Officer and Shield No. —, Assignment.

The defendant on being brought before me was informed of the within charge of violation of traffic regulations of

his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid of [fol. 38] counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel.

——— ———, City Magistrate.

Defendant pleads Not Guilty.
Trial begun Feb. 28/1946.
Trial concluded Mar. 28, 1946.
Deft. found guilty.

SENTENCE

Fined $5 or in default of payment imprisonment not to exceed — day — in City Prison. April 2 to pay. Committed to City Prison or Workhouse for — days.

Raphael Koenig, City Magistrate.

I hereby certify that the within is a True Copy of the record on file.
New York, 4/5 1946.

Edward F. Duffy, Jr., Clerk.

Fine paid, amount $5.00.
Date Apr. 1/46.

[fol. 39] CITY MAGISTRATE'S COURT OF THE CITY OF NEW YORK

Man. Court, Borough of Man.

Summons

CITY OF NEW YORK,
County of N. Y., ss.:

JOHN MCCARTHY a patrolman of the Police Department of the City of New York, being duly sworn, says, that on Dec. 28, 1944, in the County of N. Y., City of New York, the defendant Herman Gipes did unlawfully operate a motor vehicle (truck) on West End Avenue and 72nd St. with two paper signs about 5 feet by 4 feet on truck, in violation of article 9, Section 124 of the Police Traffic Reg.

(Prince Albert)

in violation of Article 9, Section 124, of the Administrative Code of the City of New York.

John McCarthy.

Sworn to before me Dec. 28, 1944. George W. Roman, Lt.

——— ———, City Magistrate.

[fol. 40] City Magistrate's Court of the City of New York

Man. Court, Borough of Man.

Docket No. 642

The People of the State of New York on the Complaint of Officer

vs.

Herman Gipes

Def't arraigned Jan. 2, 1944.
Hon. ———, ———, City Magistrate.
McCarthy, Officer and Shield No. E, Assignment.

The defendant on being brought before me was informed of the within charge of violation of administrative code of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid [fol. 41] of counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel.

——— ———, City Magistrate.

Defendant pleads Not Guilty.
Trial begun Feb. 28/46.
Date trial concluded 2/38, 1946.
Defendant found guilty.

SENTENCE

Fined $5 or in default of payment imprisonment not to exceed 2 day — in City Prison. April 2 to pay. Committed to City Prison or Workhouse for — days.

Raphael Koenig, City Magistrate.

I hereby certify that the within is a True Copy of the record on file.

New York, 4/5 1946.

Edward F. Duffy, Jr., Clerk.

Fine Paid. Amount $5.00.
Date Apr. 1, 1946.

[fol. 42] CITY MAGISTRATE'S COURT OF THE CITY OF NEW YORK

Traffic Court, Borough of Man.

SUMMONS

CITY OF NEW YORK,
County of New York, ss.:

JOHN MCCARTHY a patrolman of the Police Department of the City of New York, being duly sworn, says, that on Dec. 28, 1944, in the County of N. Y., City of New York, the defendant John Murry did unlawfully operate a motor vehicle (truck) on West End Avenue and 65th St. with two paper signs about 5 feet by 4 feet on truck Advertising Prince Albert.

In violation of Article 9, Section 124, Police Traffic Reg.

Women the Waves need you.

in violation of Article 9, Section 124, of the Administrative Code of the City of New York.

John McCarthy.

Sworn to before me Dec. 28, 1945. George W. Roman, Lt.

—— ——, City Magistrate.

[fol. 43] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Man. Court, Borough of Man.

Docket No. 643

THE PEOPLE OF THE STATE OF NEW YORK ON THE COMPLAINT OF OFFICER

vs.

John Murry

Def't arraigned Jan. 2, 1945.
Hon. —— ——, City Magistrate.
McCarthy, Officer and Shield No. —, Assignment.

The defendant on being brought before me was informed of the within charge of

Violation of Administrative Code

of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid [fol. 44] of counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel.

—— ——, City Magistrate.

Defendant pleads Not Guilty.
Tried Feb. 28/46. Found Guilty.
Date Mar. 28, 1946.

SENTENCE

Fined $5 or in default of payment imprisonment not to exceed 2 days in City Prison. Committed to City Prison or Workhouse for — days. Apr. 2 to pay.

Raphael Koenig, City Magistrate.

I hereby certify that the within is a True Copy of the record on file.
New York, 4/5 1946.

Edward F. Duffy, Jr., Clerk.

Fine Paid. Amount $5.00.
Date Apr. 1, 1946.

[fol. 45] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Manhattan Traffic Court, Borough of Manhattan

SUMMONS

CITY OF NEW YORK,
County of N. Y., ss.:

PTL. GEORGE A. LIEDVOGEL, a Patrolman of the 1st District Traffic Department of the City of New York, being duly sworn, says, that on December 28, 1944, in the County of New York, City of New York, the defendant Howard Broems, 32-56 41st St., L. I. C., chauffeur for Railway Express Agency, 218 East 44 St., N. Y. C. did unlawfully violation Article 9, Section 124, of the Traffic Regulations adopted by Police Commissioner under authority of Sec. 435, New York City Charter, Advertisement of Vehicles, No person shall operate, or cause to be operated, in or upon any street, an advertising vehicles, provides that nothing herein contained shall prevent the putting of business notices upon business delivery vehicles, so long as such vehicles are engaged in the usual business or regular work of the owner and not used merely or mainly for advertising.

in violation of Art. 9, Section 124, of the Administrative Code of the City of New York.

Ptl. George A. Liedvogel.

Sworn to before me Dec. 28, 1944. Lt. William V. Lawlor.

—— ——, City Magistrate.

[fol. 46] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK
MANHATTAN COURT, BOROUGH OF MAN.

Docket 626

THE PEOPLE OF THE STATE OF NEW YORK

on the Complaint of

PTL. GEORGE A. LIEDVOGEL

vs.

HOWARD BROEMS

Def't arraigned January 2, 1944
Hon. —— ——, City Magistrate.
Ptl. George A. Liedvogel, Officer and Shield No. —, 1st D. T.
—— ——, Assignment.
The defendant on being brought before me was informed of the within charge of

Violation of Administrative Code

of his right to communicate with relatives or friends by letter of telephone, free of charge, or his right to the aid [fol. 47] of counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel.

—— ——, City Magistrate.

Defendant pleads Not Guilty
Trial begun Feb. 28, 1946
Trial concluded Mar. 28, 1946
Defendant found guilty.

SENTENCE

Fined $5 or in default of payment imprisonment not to exceed 2 days in City Prison. April 2 to pay. Committed to City Prison or Workhouse for — days.

Raphael Koenig, City Magistrate.

I hereby certify that the within is a True Copy of the record on file.
New York, 4/5 1946

Edward F. Duffy, Jr., Clerk.

Fine Paid. Amount $5.00.
Date Apr. 1/46.

[fol. 48] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic Court, Borough of Man

SUMMONS

CITY OF NEW YORK,
County of New York, ss:

Ptl. George A. Liedvogel, a Patrolman of the 1st District Traffic Department of the City of New York, being duly sworn, says, that on December 28, 1944, in the County of New York, City of New York, the defendant Frank Reilly, 321 E. 79th St., N. Y. C., chauffeur for Railway Express Agency, 219 E. 42nd St., N. Y. C., did unlawfully violate Art. 9, Sec. 124, of the Traffic Regulations adopted by Police Commissioner under authority of Section 435, New York City Charter.

Advertising of Vehicles

No person shall operate or cause to be operated in or upon any street an advertising vehicle, provided that nothing herein contained shall prevent the putting of business notices upon business delivery vehicles, so long as such vehicles are engaged in the usual business or regular work of the owner and not used merely or mainly for advertising. in violation of Art. 9, Section 124, of the Administrative Code of the City of New York.

Ptl. George A. Liedvogel.

Sworn to before me December 28, 1944. Lt. William V. Lawlor.

——— ———, City Magistrate.

[fol. 49] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic Court, Borough of Man.

Docket No. 625

THE PEOPLE OF THE STATE OF NEW YORK

on the Complaint of

PTL. GEORGE A. LIEDVOGEL

vs.

FREDERICK REILLY

Def't arraigned January 2, 1946

Hon. —— ——, City Magistrate.

Ptl. George A. Liedvogel, Officer and Shield No. —, I. D. T.

—— ——, Assignment.

The defendant on being brought before me was informed of the within charge of

Violation of Traffic Reg.

of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid [fol. 50] of counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel.

—— ——, City Magistrate.

Defendant pleads Not Guilty.

Trial begun Feb. 28, 1946.

Trial concluded Mar. 28, 1946.

Deft. found Guilty Mar. 28/46.

SENTENCE

Fined $5. or in default of payment imprisonment not to exceed 2 days in City Prison. Apr. 2 to pay. Committed to City Prison or Workhouse for — days.

Raphael Koenig, City Magistrate.

I hereby certify that the within is a True Copy of the record on file.

Edward F. Duffy, Jr., Clerk.

New York, 4/1946.
Fine Paid. Amount $5.00.
Date Apr. 1, 1946.

[fol. 51] City Magistrates' Court of the City of New York

Man. Traffic Court, Borough of Man.

Summons

City of New York,
County of New York, ss.:

Ptl. George A. Liedvogel, a Patrolman of the 1st District Traffic Department of the City of New York, being duly sworn, says, that on December 28, 1944, in the County of New York, City of New York, the defendant Charles Arthur Harrington, 1136 Clay Ave., N. Y. C., chauffeur for Railway Express Agency, 219 East 42nd Street, N. Y. C. did unlawfully violate Article 9, Section 124 of the Traffic Regulations adopted by Police Commissioner under authority of Section 435, New York City Charter

Advertising of Vehicles

No person shall operate or cause to be operated in or upon any street, an advertising vehicles, provided that nothing herein contained shall prevent the putting of business notices upon business delivery vehicles, so long as such vehicles are engaged in the usual business or regular work of the owner and not used merely or mainly for advertising.

in violation of Art. 9, Section 124 of the Administrative Code of the City of New York.

Ptl. George A. Liedvogel.

Sworn to before me December 28, 1944, —— ——,
City Magistrate.

[fol. 52] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic Court, Borough of Man.

Docket No. 624

424-606 NY

THE PEOPLE OF THE STATE OF NEW YORK ON THE COMPLAINT OF PTL. GEORGE A. LIEDVOGEL

vs.

CHARLES ARTHUR HARRINGTON

Def't arraigned Jan. 2, 1945.
Hon. —— ——, City Magistrate.
Ptl. George A. Liedvogel, Officer and Shield No. — 1st D. T., —— ——, Assignment.

The defendant on being brought before me was informed of the within charge of

Violation of Administrative Code

of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid [fol. 53] of counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel.

—— ——, City Magistrate.

Defendant pleads Not Guilty.
Trial begin Feb. 28/46.
Trial concluded Mar. 28, 1946.
Defendant found guilty.

SENTENCE

Fined $5 or in default of payment imprisonment not to exceed 2 days in City Prison. April 2 to pay. Committed to City Prison or Workhouse for — days.

—— ——, City Magistrate.

I hereby certify that the within is a True Copy of the record on file.
New York, 4/5 1946.

Edward F. Duffy, Jr., Clerk.

Fine Paid. Amount $5.00.
Date Apr. 1/46.

[fol. 54] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic Court, Borough of Man.

SUMMONS

CITY OF NEW YORK,
County of New York, ss.:

ANDREW BENGSTON, a Ptl. of the Tr "C" Department of the City of New York, being duly sworn, says, that on Dec. 28, 1944, in the County of N. Y., City of New York, the defendant Edward Halloran did unlawfully Display advertisement signs, not directly connected with their business in front of 22 E. 29th St., N. Y. City, in violation of Art. #9, Par. 124

in violation of Art. 9, Par. 124, of the Traffic Reg. of the City of New York.

Andrew Bengston.

Sworn to before me Dec. 24, 1944. Lt. Ben Brady, 15 Pct.

—— ——, City Magistrate.

[fol. 55] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic Court, Borough of Man.

Docket No. 628

THE PEOPLE OF THE STATE OF NEW YORK ON THE COMPLAINT OF PTL. ANDREW BENGSTON

vs.

EDWARD HOLLORAN

Def't arraigned Jan. 2, 1945.
Hon. —— ——, City Magistrate.
Bengston, Traf C, Officer and Shield No. —, —— ——, Assignment.
The defendant on being brought before me was informed of the within charge of

of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid [fol. 56] of counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel.

——— ———, City Magistrate.

Defendant pleads Not Guilty.

Trial begun Feb. 28/1946.

Trial concluded Mar. 28, 1946.

Deft. found Guilty Mar. 28/1946.

SENTENCE

Fined $5 or in default of payment imprisonment not to exceed 2 day- in City Prison. Apr. 2 to pay. Committed to City Prison or Workhouse for — days.

Raphael Koenig, City Magistrate.

I hereby certify that the within is a True Copy of the record on file.

New York, 4/5, 1946.

Edward F. Duffy, Jr., Clerk.

Fine Paid. Amount $5.00.

Date Apr. 1, 1946.

[fol. 57] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic Court, Borough of Man.

SUMMONS

CITY OF NEW YORK,
County of New York, ss.:

PTL. GEORGE A. LIEDVOGEL, a Patrolman of the 1st District Traffic Department of the City of New York, being duly sworn, says, that on December 28, 1944, in the County of New York, City of New York, the defendant Emil Hugo Miller, 506 E. 5th St., N. Y. C., chauffeur for Railway Express Agency, 218 East 44th St., did unlawfully violate Article 9, Section 124, of the Traffic Regulations adopted by Police Commissioner under authority of Section 435, New York City Charter,

Advertising of Vehicles,

No person shall operate or cause to be operated, in or upon any street, an advertising vehicle, provided that nothing herein contained shall prevent the putting of business notices upon business delivery vehicles, so long as such vehicles are engaged in the usual business or regular work of the owner and not used merely or mainly for advertising.

in violation of Art. 9, Section 124, of the Administrative Code of the City of New York.

Ptl. George A. Liedvogel.

Sworn to before me December 28, 1944, Lt. William V. Lawlor, —— ——, City Magistrate.

[fol. 58] City Magistrates' Court of the City of New York

Traffic Court, Borough of Man.

Docket No. 623

The People of the State of New York on the Complaint of Ptl. George A. Liedvogel

vs.

Emil Hugo Miller

Def't arraigned Jan. 2, 1945.

Hon. —— ——, City Magistrate.

Parl. George A. Liedvogel, Officer and Shield No. —, 1st Dist. Tr., —— ——, Assignment.

The defendant on being brought before me was informed of the within charge of

Violation of Traffic Reg.

of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid [fol. 59] of counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel.

—— ——, City Magistrate.

Defendant pleads Not Guilty.

Trial Begun Feb. 28/1946.

Trial concluded Mar. 28, 1946.

Deft. found Guilty.

SENTENCE

Fined $5 or in default of payment imprisonment not to exceed 2 day- in City Prison. Apr. 2 to pay. Committed to City Prison or Workhouse for — days.

Raphael Koenig, City Magistrate.

I hereby certify that the within is a True Copy of the record on file.

Edward F. Duffy, Jr., Clerk.

New York, 4/5, 1946.
Fine Paid. Amount $5.00.
Date Apr. 1, 1946.

[fol. 60] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic District, Borough of Man.

SUMMONS

(CORPORATION)

CITY OF NEW YORK,
County of New York, ss.:

In the Name of the People of the State of New York.

To Railway Express Agency, Inc., a corporation located at 230 Park Ave., Man.

You are hereby summoned to appear before me at No. 455 W. 151 Street—Manhattan Traffic Court on the 12 day of June, 1945, at 10 A. M., to answer a charge made against you upon the information of George W. Horner, Shield No. 4422 of Traffic D for viol. of Art. 9, Sec. 124, of the Traffic Regulations adopted by the Police Commissioner under Sec. 435 of the Charter of the City of N. Y. in violation of section 124 of the Traffic Regulations.

Dated at the City of New York, this 31 day of May, 1945.

Sala, City Magistrate.

[fol. 61] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic Court: Borough of Manhattan

AFFIDAVIT OF GEORGE W. HORNER

STATE OF NEW YORK,
County of New York, ss.:

GEORGE W. HORNER, being duly sworn, deposes and says: That he is a Police Officer of the Department of Police of the City of New York and is assigned to Traffic "D"; that his shield number is 4422.

1. That on the 2nd day of May, 1945, the defendant Railway Express Agency, Inc., did violate Article 9, Section 124, of the Traffic Regulations, adopted by the Police Commissioner of the City of New York, under authority of Section 435 of the New York City Charter, in that the defendant, as owner of a certain motor vehicle bearing license No. 290413, N. Y., did cause and permit such vehicle to be operated as an advertising vehicle upon the streets of the City of New York, to wit, at or near 152 East 34th Street, Borough of Manhattan, City of New York, at or about 12:30 P. M., which was driven by one Christopher Dunn, an employee of the defendant engaged in its business; that said truck had on one side thereof a sign advertising Ringling Bros. & Barnum & Bailey Circus, which sign was approximately 4 feet by 10 feet, and on the other side had a sign advertising the motion picture "Without Love", which sign was approximately 4 feet by 10 feet, and that neither [fol. 62] sign was a business notice of the defendant but represented advertising in no way pertaining to defendant's business.

2. That on the 2nd day of May, 1945, the defendant Railway Express Agency, Inc., did violate Article 9, Section 124, of the Traffic Regulations, adopted by the Police Commissioner of the City of New York, under authority of Section 435 of the New York City Charter, in that the defendant, as owner of a certain motor vehicle bearing license No. 290855, N. Y., did cause and permit such vehicle to be operated as an advertising vehicle upon the streets of the City of New York, to wit, at or near 140 East 43rd Street, Borough of Manhattan, City of New York, at or about 1:15 P. M., which was driven by one Joseph Buckley, an em-

ployee of the defendant engaged in its business; that said truck had on one side thereof a sign advertising Camel Cigarettes, which sign was approximately 3 feet by 7 feet, and on the other side had a sign advertising Ringling Bros. & Barnum & Bailey Circus, which sign was approximately 3 feet by 7 feet; and that neither sign was a business notice of the defendant but represented advertising in no way pertaining to defendant's business.

3. That on the 2nd day of May, 1945, the defendant Railway Express Agency, Inc., did violate Article 9, Section 124, of the Traffic Regulations, adopted by the Police Commissioner of the City of New York, under authority of Section 435 of the New York City Charter, in that the defendant, as owner of a certain motor vehicle bearing [fol. 63] license No. 291146, N. Y., did cause and permit such vehicle to be operated as an advertising vehicle upon the streets of the City of New York, to wit, at or near 316 East 23rd Street, Borough of Manhattan, City of New York, at or about 1:30 P. M., which was driven by one Harry Hanlon, an employee of the defendant engaged in its business; that said truck had on one side thereof a sign advertising Radio Station WOR, which sign was approximately 4 feet by 10 feet, and on the other side had a sign advertising Ringling Bros. & Barnum & Bailey Circus, which sign was approximately 4 feet by 10 feet, and that neither sign was a business notice of the defendant but represented advertising in no way pertaining to defendant's business.

I charge the defendant with three separate violations of law as set forth in this complaint and I pray that the defendant be dealt with according to law.

Pol. Geo. W. Horner, Complainant Shield 4422 Traffic "D".

Sworn to before me this 31 day of May, 1945. Sala, City Magistrate.

[fol. 64] CITY MAGISTRATE'S COURT OF THE CITY OF NEW YORK

Traffic Court: Borough of Manhattan

PEOPLE OF THE STATE OF NEW YORK ON THE COMPLAINT OF GEORGE W. HORNER, Plaintiff,

—against—

RAILWAY EXPRESS AGENCY, INC., Defendant

ANSWER

For its answer to the summons and information in the form of the affidavit of George W. Horner, both dated May 31, 1945, defendant Railway Express Agency, Inc., by its counsel, Davis, Polk, Wardwell, Sunderland & Kiendl;

1. Denies that the acts described in the affidavit constitute a violation of the Traffic Regulations.

For a First Defense:

2. Alleges that the vehicles referred to in the affidavit were at the times referred to engaged in the usual business or regular work of Railway Express Agency, Inc., and were not used merely or mainly for advertising.

[fol. 65] For a Second Defense:

3. Alleges that, if construed to prohibit the carrying of paid advertising by the defendant on its delivery vehicles while operated in the streets of New York City in the transportation of merchandise in the usual conduct of the business of the defendant, § 124 of the Traffic Regulations is arbitrary, unreasonable and void, and exceeds the powers delegated by the State of New York to the City and to the Police Commissioner.

For the Third Defense:

4. Alleges that, if construed as set forth in paragraph 3 hereof, § 124 of the Traffic Regulations would deprive the defendant of its property without due process of law in violation of the State and Federal Constitutions.

For a Fourth Defense:

5. Alleges that the defendant, a corporation of the State of Delaware doing business in the State of New York,

employs delivery vehicles in the City of New York preponderantly in the carriage of goods in interstate commerce, and carries paid advertising on its vehicles as an incident to the carriage of goods, and that § 124 of the Traffic Regulations, if construed as set forth in paragraph 3 hereof, would exceed the police powers of the State of New York and be an unconstitutional interference with interstate commerce.

[fol. 66] Wherefore defendant demands judgment dismissing the summons and information.

Davis, Polk, Wardwell, Sunderland & Kiendl, Attorneys for Defendant, 15 Broad Street, Borough of Manhattan, City of New York 5.

(Verified on June 29, 1945.)

[fol. 67] MANHATTAN TRAFFIC COURT

City of New York—Borough of Manhattan

Docket No. 82964

PEOPLE OF THE STATE OF NEW YORK ON COMPLAINT OF GEORGE W. HORNER

against

RAILWAY EXPRESS AGENCY, INC., Defendant

Testimony

June 29, 1945

Before Hon. Morris Rothenberg, City Magistrate

Appearances:

Mr. Sylvan M. Elias, Assistant Corporation Counsel, City of New York, For the People.

Davis, Polk, Wardwell, Sunderland & Kiendl, Esqs., by Ralph M. Carson, Esq., of counsel, For the Defendant.

[fol. 68] Charge: Violation of Art. 9, Sec. 124, of the Traffic Regulations of the City of New York, Under Sec. 435 of the Charter.

(Defendant by counsel plead not guilty and ready.)

GEORGE W. HORNER, a Patrolman, attached to the Police Department of the City of New York, assigned to Traffic D, shield 4422, called as a witness on behalf of the People, after being duly sworn, testified as follows:

Mr. Elias: I first want to offer in evidence a copy of the Traffic Regulations promulgated by the Police Commissioner pursuant to his authority under Section 435 of the City Charter, certified by the Chief Clerk of the Police Department. These are the traffic regulations, and that they were published in the City Record filed with the City Clerk on September 15, 1943, Article 9, Section 124—the section involved here—had not been amended to the date of this particular certification, which was June 4, 1945.

The Court: Received in evidence and marked People's Exhibit 1. Will you read that, please.

Mr. Elias (reading): "Section 124. Advertising Vehicles. No person shall operate, or cause to be operated, in or upon any street an advertising vehicle, provided that nothing herein contained shall prevent the putting of busi-
[fol. 69] ness notices upon business delivery vehicles, so long as such vehicles are engaged in the usual business or regular work of the owner and not used merely or mainly for advertising."

STIPULATION OF FACTS

I also want to read into the record a stipulation entered into between counsel for the respective parties as follows:

It is hereby stipulated for all purposes of trial of the complaint served upon the defendant with reference to the alleged violation of Section 124 of the Traffic Regulations of the City of New York:

1. That the Railway Express Agency, Inc., a Delaware corporation, received authority to do business in the State of New York on or about January 22, 1929, and has been conducting business in this State ever since. The printed copy of the authority of Railway Express Agency, Inc., bearing the initials of counsel is an authentic copy of the original.

2. That on May 2, 1945, at or about 12:30 P. M., a motor vehicle bearing license No. 290413 New York was being operated by the defendant at or near 152 East 34th Street, Borough of Manhattan, New York City, by defendant's

employee, Christopher Dunn, with the consent of the defendant and in pursuance of its business.

3. On May 2, 1945, at or about 1:15 P. M., motor vehicle bearing license number 290855 New York was being oper-
[fol. 70] ated by the defendant at or near 140 East 43rd Street, Borough of Manhattan, New York City, by defendant's employee, Joseph Buckley, with the consent of the defendant and in pursuance of its business.

4. That on May 2, 1945, at or about 1:30 P. M., motor vehicle bearing license number 291146 New York, was being operated by the defendant at or near 316 East 23rd Street, Borough of Manhattan, New York City, by defendant's employee, Harry Hanlon, with the consent of the defendant and in pursuance of its business.

Dated, New York, June 25, 1945.

(Two sheets received in evidence and marked People's Exhibits 2-A and 2-B.)

Direct examination.

By Mr. Elias:

Q. Patrolman Horner, you are a member of the Police Department of the City of New York?

A. I am.

Q. And on May 2, 1945, at about 12:30 P. M., were you in front of premises 152 East 34th Street, New York City?

A. I was.

Q. By whom were you accompanied?

A. By Detective Prefer of the Photo Gallery.

Q. He is also a member of the Police Department of New York City?

A. Yes, sir.

Q. In front of those premises did you see a truck of the Railway Express Agency, Inc., bearing license 290413?

A. I did.

[fol. 71] Q. Did that truck have some other number on it besides the license number?

A. Yes.

Q. What is that number?

A. 2225.

Q. Did you see any signs on that truck advertising anything other than Railway Express Agency, Inc.?

A. I did.

Q. What were these signs?

A. On the right side of the truck was a sign advertising, "Ringling Brothers and Barnum and Bailey's Circus." On the left side was advertised a motion picture, "Without Love; Spencer Tracy and Katherine Hepburn; M. G. M."

Q. I show you a photograph and ask whether it is a fair representation of the truck and one of the signs advertising "Without Love"?

A. It is.

Mr. Elias: I offer it in evidence.

By the Court:

Q. Is it a fair representation of the sign on the truck on the day in question?

A. That's right.

The Court: Received in evidence.

(Marked People's Exhibit 3.)

By Mr. Elias:

Q. I show you another photograph and ask whether it is a fair representation of that same truck with the other sign on it?

A. It is.

Mr. Elias: I offer that in evidence.

[fol. 72] By the Court:

Q. On the same day?

A. On the same truck.

Q. As charged in the complaint?

A. Charged in the complaint.

The Court: Received.

(Marked People's Exhibit 4.)

By Mr. Elias:

Q. Were these signs in color?

A. They were.

Q. Did you measure these signs?

A. I measured one on 34th Street. It measured four feet by ten feet.

Q. Does that apply to both of the signs?

A. It does.

Q. Patrolman Horner, on that same day about 1:15 P. M., were you in front of premises 140 East 43rd Street, New York City?

A. I was.

Q. Did you see a truck of the Railway Express Agency, Inc., with the license 290855 New York?

A. I did.

Q. And did that truck also have another number on it?

A. It did.

Q. What was that number?

A. 20,465.

Q. Did you see any signs on that truck advertising anything other than Railway Express Agency, Inc.?

A. I did.

Q. What did you see?

A. On the right side of the truck was a commercial ad, "I'd walk a mile for a Camel." On the left side, "Ringling Brothers and Barnum and Bailey."

[fol. 73] Q. I show you a photograph and ask whether it is a fair representation of that truck with the sign on it advertising Camels?

A. It is.

Mr. Elias: I respectfully offer that in evidence.

By the Court:

Q. On the day charged?

A. On the day in question charged in the complaint.

The Court: Received.

(Marked People's Exhibit 5.)

By Mr. Elias:

Q. I show you another photograph and ask whether it is a fair representation of that same truck with the sign on the other side of it?

By the Court:

Q. On the same date?

A. On the same date.

Q. As charged in the complaint?

A. It is.

The Court: Received in evidence.

(Marked People's Exhibit 6.)

By Mr. Elias:

Q. Did you measure these signs, Patrolman Horner?

A. The one at 43rd Street, I did not. I judge it to be approximately three by seven feet.

[fol. 74] Q. Each of the signs on it?

A. On each side.

Q. Were these signs in color?

A. They were.

Q. On that same day, at or about 1:30 P. M., in front of premises 316 East 23rd Street, New York, did you see a truck of Railway Express Agency, Inc. with the license 291146 New York?

A. I did.

Q. Did that truck likewise have another number on it?

A. It did.

Q. What was the number?

A. 26568.

Q. And did you see any signs on that truck at the time advertising anything other than Railway Express Agency, Inc.?

A. I did.

Q. What did you see?

A. On the right side was "WOR, tune in 710. This is Mutual." On the left side was "Ringling Brothers and Barnum and Bailey Circus."

Q. I show you a photograph and ask whether it is a true representation of that truck on that day and at that time and place and with the sign advertising Station WOR?

A. It is.

Mr. Elias: I respectfully offer it in evidence.

The Court: Received in evidence.

(Marked People's Exhibit 7.)

Q. I show you another photograph and ask whether that is a fair representation of that same truck on that day and at that place and time showing a sign advertising Ringling Brothers and Barnum and Bailey Circus?

A. It is.

[fol. 75] Mr. Elias: I respectfully offer it in evidence.

The Court: Received.

(Marked People's Exhibit 8.)

Q. Were both of those signs likewise in color?
A. They were.
Q. Did you measure these signs?
A. No; I judge them to be approximately four by ten.

Cross-examination.

By Mr. Carson:

Q. Did you look inside of any of these three trucks to see what they carried?
A. The truck on 34th Street contained merchandise.
Q. What merchandise?
A. General merchandise.
Q. You cannot give any more particulars?
A. Well, boxes.
Q. Just boxes?
A. Boxes.
Q. How about the other two?

Mr. Elias: I object to this as incompetent, irrelevant and immaterial. The question is whether they violated the section.

The Court: I will allow it. Overruled.

The Witness: The truck on 43rd Street was closed.

Q. You did not look in?
A. No.
Q. How about the third one?
A. I did. The same kind of merchandise.

Mr. Carson: That is all.

[fol. 76] Joseph V. Prefer, a Detective, attached to the Police Department of the City of New York, assigned to the 18th Division, Photograph Gallery, Shield 1526, called as a witness on behalf of the People, after being duly sworn, testified as follows:

Direct examination.

By Mr. Elias:

Q. You have heard Patrolman Horner testify here?
A. I did.
Q. And did you accompany him on all occasions referred to?

A. I did.

Q. And are you the one who took these photographs offered in evidence?

A. Yes, sir.

Mr. Elias: If counsel for the defendant will concede that Detective Prefer would testify to the same state of facts and the same things that Patrolman Horner has testified to, I believe that we can save the time of the Court.

Mr. Carson: I so concede.

Mr. Elias: The People rest.

MOTION TO DISMISS

Mr. Carson: The defendant moves to dismiss on the law, your Honor.

The Court: Do you wish to add anything to that statement?

Mr. Carson: I am going to put in a case. I offer in evidence a copy of the certificate of incorporation of the Railway Express Agency, Incorporated, dated December 6, 1928. [fol. 77] Mr. Elias: If that is the one that has Mr. Carson's initials on it, there is no objection.

Mr. Carson: I will put my initials on it. I exclude from the offer at Mr. Elias' suggestion, a foot-note on the first page.

(Marked Defendant's Exhibit A, in evidence.)

The Court (addressing Mr. Carson): Have you finished your motion; have you concluded what you wish to say on the motion?

Mr. Carson: I merely noted my motion to dismiss on the law. I may argue it later.

The Court: Do you want a ruling on the motion now? Do you want a ruling? You better complete your argument.

Mr. Carson: I will then, your Honor. Under Section 124 there is an express provision that the defendant may put business notices upon its delivery vehicles, so long as they are engaged in the usual business or regular work of the owner and not used "merely or mainly" for advertising. Now, of course, our essential point is that these vehicles, as shown by the People's case, were used in the business of the Railway Express Agency, Inc. and were not used

"merely or mainly" for advertising. That is the substance of our argument. I would like to file a brief on it.

The Court: I will deny your motion to dismiss.

[fol. 78] THE DEFENSE

ELIPHALET REMINGTON MERRY, JR., called as a witness on behalf of the defendant, after being duly sworn, testified as follows:

Direct examination.

By the Court:

Q. What is your name?
A. Eliphalet Remington Merry, Jr.
Q. Where do you live?
A. 618 Arlington Avenue, Westfield, New Jersey.

By Mr. Carson:

Q. You are secretary of the Railway Express Agency, Inc.?
A. I am.
Q. And have been for how long?
A. Ever since it has been in existence, practically, since March 1st, anyway, 1929.
Q. Have you brought with you the minutes of the Board of Directors meeting of October 27, 1942, and January 26th, 1943, having to do with the authorization to enter into a contract for advertising?
A. I have.
Q. Will you produce them, please?
A. Do you want to see the original minutes? These are the minutes of October 27, 1942. I have copies of them here.
Q. May I see the copy?
A. Yes.
Q. Will you point out the portion of the October 27, 1942, minutes that had to do with authorization to the president to enter into advertising contracts?

[fol. 79] Mr. Elias: Objected to. I object to any testimony as to what their minutes show because there is nothing in their minutes that can authorize them to violate traffic regu-

lations of this city. Furthermore, any testimony of those minutes is absolutely incompetent, irrelevant and immaterial to the issue here.

The Court: I presume that the purpose of showing those minutes is to attempt to prove that advertising was related to the business, so that it is an exception under the traffic regulations.

Mr. Carson: That is true, your Honor. It is also a further purpose of ours to show that as distinguished from the cases which will be cited to you, this particular operation was fully authorized by the corporate charter and carried out pursuant to the direction of the Board of Directors.

The Court: The question still remains, whether despite that you have the right to do it. I will overrule the objection and allow it.

Mr. Elias: May I have a blanket objection to this line of testimony?

The Court: Yes.

The Witness (continuing): The authority is down at the bottom, typewritten part that reads: "The matter was discussed and a motion duly made and seconded and carried." [fol. 80] Mr. Carson: I offer that particular minute in evidence and ask that the book be deemed marked and ask leave to substitute a copy.

(Paper marked Defendant's Exhibit B.)

By Mr. Carson:

Q. Turn to the minutes of January 26, 1943, and point out that portion, if any, which relates to authorization to enter into advertising contracts?

A. These are the minutes of January 26, 1943, and that is a portion, "Advertising" and reads—

Mr. Carson: I offer the minutes in evidence and ask that the original be deemed marked and ask leave to substitute a copy.

The Court: Received.

(Marked Defendant's Exhibit C, in evidence.)

Q. How long has the company, by action of its Board, carried advertising on its trucks in New York?

Mr. Elias: I object on the ground it is incompetent, irrelevant and immaterial.

The Court: I will allow it.

A. Well, it goes back to about 1930, I should say.

Mr. Carson: That is all.

[fol. 81] Cross examination.

By Mr. Elias:

Q. Mr. Merry, were you the party who signed the contract relating to the advertising discussed here?

A. I did not.

Q. Are you familiar with those contracts?

A. Somewhat.

Q. Were you present at the Board of Directors meeting where these resolutions were adopted?

A. Yes, sir.

Q. Did you know at that time that there was a regulation of the traffic regulations prohibiting the advertising on vehicles?

Mr. Carson: I object to that as incompetent, irrelevant and immaterial.

The Court: I will allow it; overruled. The question is, did he know.

Mr. Carson: Mr. Elias is putting the law in his own way.

A. Did I know it? I did not know there is any, or now.

August Wilkoc, called as a witness on behalf of the defendant, after being duly sworn, testified as follows:

Direct examination.

By the Court:

Q. What is your name?

A. August Wilkoc.

Q. Where do you live?

A. 53 Lawrence Avenue, Tuckahoe, New York.

[fol. 82] By Mr. Carson:

Q. What is your present position with the Railway Express Agency?

A. Superintendent of Vehicle Division.

Q. How long have you occupied that position?

A. A little over eight years.

Q. How long have you been in the employ of the company?

A. Forty-four years.

Q. Will you tell the Court just how the trucking business of the Railway Express Agency operated in New York City?

Mr. Elias: I object. It is absolutely incompetent, irrelevant and immaterial.

The Court: It may have some bearing. I will allow it.

Q. Just describe the operations.

A. On our outbound business our vehicles pick up traffic at various shipping establishments; take them to assorting stations where it is assorted to railway heads. Thereafter they are taken to railway heads and loaded into railroad cars. On our inbound business the traffic arriving in New York City comes in on railroad cars to the rail heads. From the rail heads it is assorted to sub-stations. After arrival at the other stations it is still broken down into delivery districts and thereafter dispatched in vehicles to the various addresses of the consignees within those districts.

Q. Where are the railway heads to which trucks move?

[fol. 83] Mr. Elias: May I have a blanket objection?

The Court: Yes.

Q. Where are the rail heads to which the trucks move?

A. Four on the Jersey side of the river—Communipaw, Erie, Lackawanna, West Shore. There is one at the west side, 33rd Street and 11th Avenue; there is one at 132nd Street and St. Ann's Avenue, Bronx; there is one at Long Island City, 39th Street, off Northern Boulevard; there is one at Grand Central Station; there is one at 138th Street and North River; there is one at 60th Street right off 12th Avenue.

Q. You spoke of outbound and inbound shipments. Do I correctly understand that the goods carried in your trucks arrive from all parts of the country and are taken to all parts of the country?

A. That's right.

Q. Will you tell the Court in general what kind of merchandise, the different varieties that your trucks carry?

A. Almost anything and everything. I could outline a few of the shipments.

Q. Give us some examples.

A. There are bees, for instance; masts for ships; there are explosives, bombsights, periscopes.

Mr. Elias: Continuing the same objection.

The Court: Yes.

The Witness (continuing): Periscopes, blood plasma; movie films, airplane wings, glassware, garments, fish; stage scenery, eggs, shoes; almost everything you can think of.

[fol. 84] Q. Tobacco?

A. Tobacco, cigarettes.

Q. Do your drivers fill out performance cards representing their day's work?

A. They do.

Q. What is the nature of that record that the performance card denotes?

A. Various clocking times and the points and the work that they are engaged in during the day's performance.

Q. A regular corporate record filed where?

A. In the supervisor's office.

Q. How many supervisors are there?

A. I would say at least there are a dozen.

Q. They are all under your direction?

A. Yes, sir.

Q. I show you three performance cards in the names of C. P. Dunn, J. A. Buckley and H. Hanlon, dated May 2, 1945, and ask if those are the cards for the three drivers referred to in the complaint, with respect to the operation of their trucks that day?

A. That is correct.

Mr. Carson: I offer these three cards in evidence.

Mr. Elias: I object to that on the ground it is incompetent, irrelevant and immaterial, having no bearing upon the issue of this case, whether the section of the traffic regulations has been violated. They are merely performance cards of their three drivers.

Q. What do these cards purport to show?

A. They show the manner in which the truck operated, showed it was also loaded, showed what they carried, hours of operation.

[fol. 85] Mr. Elias: It does not show anything carried. It shows the time the deliveries were made.

The Court: I will sustain the objection.

Mr. Carson: I would like your Honor to look at them.

The Court: It is not in evidence.

Mr. Carson: May I mark them for identification.

(Cards marked Defendant's Exhibits D, E and F, for identification.)

Q. What use is made by the company of these performance cards? What purpose do they serve?

Mr. Elias: I object to it on the ground it is incompetent, irrelevant and immaterial.

The Court: Sustained.

Q. In your experience with the Railway Express Agency, do you know whether the trucks are ever driven through the streets merely for the purpose of exhibiting advertising?

Mr. Elias: I object to that on the ground it is irrelevant, incompetent and immaterial.

The Court: Sustained.

Q. Is it the practice and custom of the Railway Express Agency to send trucks through the streets empty, merely to show advertising on the side?

[fol. 86] Mr. Elias: I object on the ground it is incompetent, irrelevant and immaterial.

The Court: I will allow it.

A. No.

Q. Do you know of any case where trucks have been driven empty for that purpose?

A. I do not.

Q. Has the Railway Express Agency carried any merchandise for the circus?

A. Oh, yes.

Q. I show you the bottom of a delivery record and ask if that is an original record showing a consignment of goods for the circus?

A. That is an original delivery sheet.

Mr. Elias: I object to that as incompetent, irrelevant and immaterial; it has no bearing on this particular violation.

Mr. Carson: I offer it in evidence.
The Court: What do you refer to?
Mr. Carson: Delivery sheets.
The Court: I sustain the objection.
Mr. Carson: I offer it for identification.

(Marked Defendant's Exhibit G, for identification, two sheets.)

Q. I show you three more delivery sheets, being the original record showing consignment of merchandise by the circus.

Mr. Elias: The same objection.
The Court: I will allow that question.

A. These are original delivery sheets, representing deliveries to the Barnum and Bailey Circus.

[fol. 87] Mr. Carson: I offer them in evidence.
Mr. Elias: Same objection.
The Court: I will sustain the objection.
Mr. Carson: I offer them for identification.

(Marked Defendant's Exhibits H, I and J, for identification.)

Q. To what extent do you know, Mr. Wilkoc, does the Railway Express Agency carry merchandise for WOR?

Mr. Elias: I object.
The Court: Objection sustained.

Q. To what extent does the Railway Express Agency cover movie films?

Mr. Elias: I object.
The Court: Sustained. It is too broad a question. It does not have relevancy to this particular issue. If you want to show it was carried in this particular instance, as cited in the complaint, I will allow you to show that.

Q. Do you personally know, Mr. Wilkoc, what was carried in the three trucks on May 2nd referred to in the complaint?
A. I do not.

Mr. Carson: I do not know whether it is necessary. I note an exception to your Honor's ruling on all the excluded evidence.

[fol. 88] Cross Examination.

By Mr. Elias:

Q. About how many trucks has the Railway Express Agency, Inc., operating in the City of New York?

A. I would say a total of 1900 units.

Q. And they carry packages from one place to another in this city, is that correct?

A. Yes, sir.

Q. Do all these trucks have advertisements on the outside of them?

A. I believe they do.

Q. Do you know?

A. Yes, I think I do know.

Q. Do they?

A. Yes.

Mr. Elias: That is all.

Redirect Examination.

By Mr. Carson:

Q. What advertising do they have other than those referred to in the evidence this morning?

A. They have "Seventh War Loan."

Mr. Elias: I object to that on the ground it is incompetent, irrelevant and immaterial, as to what advertising they carried.

The Court: I will sustain the objection.

Q. For example, do they have advertising, "Red Cross"?

A. Yes.

Mr. Elias: I object to that.

The Court: I sustain the objection.

Mr. Elias: I move to strike out the answer.

The Court: Strike it out.

Q. What proportion of the 1900 trucks which you mention would you say carry shipments which either come [fol. 89] from outside the State of New York or are destined for points outside of New York?

Mr. Elias: I object.

The Court: I will allow it—if you know.

A. They carry freight in and out of the city, all used in our business.

Q. You spoke of carrying freight in and out of the city. I am directing your attention to transportation in and out of the State of New York. Would you know what proportion of shipments had to do with inter-State business?

A. Intra-State?

Q. Inter-State business, among the States?

A. I can say at least 80 per cent of the traffic is inter-State.

Q. That is to say moving outside of the State of New York?

A. Right.

Recross-Examination.

By Mr. Elias:

Q. On that day in question, you do not know what these three trucks were carrying?

A. No.

Q. You do not know where those packages came from?

A. I do not.

Q. You do not know where they were going?

A. I do not.

Q. You do not know whether those packages on that truck had their origin in New York City and were delivered in New York City, do you know?

A. I know that the majority were from out of the city.

Q. Don't you have a certain number of trucks that stay only here in New York City?

A. No.

[fol. 90] Q. Do you have any trucks used only in New York City?

A. No.

Q. I asked you before on cross examination whether you had any trucks that are confined to the City of New York and I believe your reply was "eighteen or nineteen hundred"?

Mr. Carson: I think that is a misrepresentation.

Mr. Elias: I will stand corrected if it is. I believe that is the question.

The Court: You might ask him again.

Q. How many trucks of Railway Express Agency, Inc., are used within the City of New York?

A. In the business of Railway Express Agency, Inc., about 1900 units.

By Mr. Carson:

Q. And did you understand by that that those trucks never leave New York City, these 1900?

A. They do not leave New York City.

Q. Do they ever go to the Jersey terminal?

A. They do that.

Q. Are inter-State shipments handled by Railway Express Agency separate and carried in special trucks; are they mixed up with local shipments?

A. Mixed up.

Mr. Carson: That is all.

By the Court:

Q. Do you know what the shipments were in this particular case, inter-State or city shipments?

A. I do not know definitely what was in them.

[fol. 91] Joseph Buckley, called as a witness on behalf of the defendant, and being duly sworn, testified as follows:

Direct Examination.

By the Court:

Q. What is your name?

A. Joseph Buckley.

Q. Where do you live?

A. 224 East 47th Street, New York City.

Q. What is your occupation?

A. Vehicle man, driver.

By Mr. Carson:

Q. Mr. Buckley, you are one of the drivers referred to in the complaint in this case?

A. Yes, sir.

Q. You were driving one of the Agency's trucks on May 2, 1945?

A. Yes, sir.

Q. Which carried advertising on the side?

A. Yes, sir.

Q. I show you a performance card bearing your name, (Defendant's Exhibit E, for identification), to refresh your memory, if necessary. Will you tell the Court, if you know, what merchandise your truck carried that day?

A. Yes, sir.

The Court: State that, if you know.

The Witness (continuing): It was shipments from out of the city to be delivered to consignees in New York City.

The Court: That is not the question. The question is, what merchandise was on the truck.

The Witness: Cartons.

[fol. 92] Q. Of cigarettes, you mean?

A. No; cartons of merchandise; I do not know the contents.

Q. And you say these were shipments from out of the city?

A. Yes, sir.

Q. From what point did they originate?

A. I cannot recall where they had come from. There were shipments by rail, to be delivered to consignees, on my truck, and also shipments via airplane to be delivered to consignees.

Q. Do you know whether these shipments came from the State of New York or outside of the State of New York?

A. Outside New York.

By the Court:

Q. Do you know what kind of merchandise it was?

A. No.

By Mr. Carson:

Q. You did not look in the cartons?

A. No.

Cross Examination.

By Mr. Elias:

Q. Are you present when your truck is loaded for your deliveries on a particular day?

A. Yes, sir.

Q. Do you help in loading with the truck?

A. Yes, sir.

Q. Are you told that each package comes from a certain destination?

A. I am not told, but I receive the waybill stating such.

Q. And you read those waybills?

A. Yes, sir.

Q. Every one of them?

A. I do, before each delivery.

[fol. 93] Q. Now, will you tell us where some of these packages which you carried on your truck came from on that particular day, and tell me the State? Suppose you read every one of them.

A. It is some time since I delivered them.

By the Court:

Q. This shipment that we are talking about.

A. It was from out of the State. I couldn't tell you exactly.

Q. You do not know where any of them came from?

A. No.

Redirect examination.

By Mr. Carson:

Q. When you handle a shipment on your truck, you do receive a delivery record, do you?

A. Yes, sir.

Q. Who gives you that, your supervisor or foreman?

A. Yes, sir.

Q. This gives information as to the origin of the shipment?

A. Yes, sir.

Q. And the testimony you have given this morning as to the merchandise you were carrying on May 2nd is based on your recollection of the delivery record you saw?

A. Yes, sir.

Mr. Carson: That is all.

Recross-examination.

By Mr. Elias:

Q. How many hours a day do you work?

A. Seven hours and forty minutes.

[fol. 94] Q. Do you work any overtime?

A. At times.

Q. Do you recall whether you worked overtime on May 2nd?

A. No, I do not.

Q. At the end of a day do you have any packages in your truck that are undelivered?

A. Yes, sometimes I have.

Q. Do you want the Court to believe that you read each one of these manifests of whatever you carry showing the destination?

A. Yes, sir.

By Mr. Carson:

Q. When you deliver packages is the delivery record signed by the consignee?

A. Yes, sir; each one is signed by the consignee.

Q. You are responsible for that?

A. Yes, sir.

Recross-examination.

By Mr. Elias:

Q. But you deliver only in the City of New York, don't you?

A. Yes, sir.

Q. You do not deliver outside?

A. No.

Q. All you were interested in is getting the signature of the person to whom you bring the package?

A. Yes, sir.

CHRISTOPHER P. DUNN, called as a witness on behalf of the Defendant, after being duly sworn, testified as follows:

Direct examination.

By the Court:

Q. What is your name?
A. Christopher P. Dunn.
[fol. 95] Q. Where do you live?
A. 3446—91st Street, Jackson Heights.
Q. What is your occupation?
A. Driver.

By Mr. Carson:

Q. You are one of the drivers of the trucks refered to in the complaint that carried advertising on May 2nd, 1945?
A. Yes, sir.
Q. Do you happen to remember what was the contents of your truck on that day?
A. Well, it contained only deliveries for that morning.
Q. What do you mean by that?
A. We have a pick-up in the afternoon.
Q. What was the nature of the deliveries, do you know?
A. Well, we have everything practically; it is from insurance papers to defense uniforms—military uniforms.

By the Court:

Q. You mean that you ship?
A. We deliver. We carry in the trucks, and medicines and different articles of clothing.
Q. General merchandise?
A. General merchandise.

By Mr. Carson:

Q. I hand you Defendant's Exhibit D, for identification. Is that your performance card for that day?
A. Yes, sir.
Q. Does that refresh your memory as to the contents on that particular day?

[fol. 96] The Court: Which truck?
Mr. Carson: the truck he was driving—card 2225.

Q. Is that one of the trucks referred to in the complaint?

Mr. Carson: Yes.

A. That is mine.

Q. Can you remember what particular merchandise your truck was carrying that day?

A. Well, at the time I was picked up by the officer I was delivering to March Military, 155 East 34th Street, the same thing as March Trading & Uniform Accessories. That is only one of them. We have everything—trunks, baggage.

Q. You did not have anything else that day?

A. We truck every day in the week. We have returned luggage from soldiers leaving for sea and for soldiers coming back from furlough.

Q. The shipments you were handling on May 2nd, 1945, do you recall where they originated from?

By the Court:

Q. Do you know?

A. I couldn't say that.

Q. What are you, one of the drivers?

A. Driver.

Q. Your duties are to deliver general merchandise to the consignees?

A. That's it.

Q. That is the business?

A. Yes, sir. At this time of the day, in the afternoon it is pick-up.

The Court: You concede, Counsel, that the business of the [fol. 97] defendant is that of delivering merchandise, is that right, from points—

Mr. Carson: It is a little more general business than that.

The Court: Will you describe for the record; can you make a statement which the counsel for the People will agree to? How do you describe the business of the defendant?

Mr. Carson: I cannot describe it better that described in the charter—Defendant's Exhibit A. It has the broadest powers generally, transportation; but they may own barges, railway cars, garages, buy and sell personal property; engage in any kind of moving business.

The Court: Is there an officer of the corporation here?

Mr. Carson: Yes.

The Court: Put him on the stand.

JOHN R. MARRA, called as a witness on behalf of the defendant, after being duly sworn, testified as follows:

Direct examination.

By the Court:

Q. What is your name?
A. John R. Marra.
Q. Where do you live?
A. 230 Park Avenue.
Q. What is your occupation?
A. Executive assistant.

By Mr. Carson:

Q. You are executive assistant of Railway Express Agency, Inc.?
A. That's right.
[fol. 98] Q. You verified the answer in this case?
A. Yes, sir.
Q. How long have you been in the employ of this corporation?
A. For thirty years.
Q. Before you became an executive assistant in 1943, I understand, what was your employment?
A. Well, I was attached to the president's staff as superintendent of organization.
Q. The Court has asked, what is the general nature of the business of Railway Express Agency, Inc. Will you state for the purpose of the record?

Mr. Elias: May I have an objection to this testimony, because I believe that the certificate of incorporation, which has been offered in evidence, speaks for itself.
The Court: Overruled.

The Witness: We are engaged in a nation-wide express transportation business. We have other activities in that we sell in our offices express money orders, express travelers checks. We serve the public in many ways. We help them get goods out of pawn by taking their tickets and money and securing the goods in the pawnbroker and transporting back to wherever they may be. In many cities we handle pick-up and delivery of L. C. L. in the railways.

Q. In the City of New York?

A. In the City of New York our main business is general express transportation, handling of merchandise from New York to all points of the country, and inbound from all parts of the country to New York City.

[fol. 99] By Mr. Carson:

Q. It has been testified that the company uses about 1900 trucks in New York City. Do you know yourself what the total number of its trucks is throughout the country?

A. We have about 14,500 units.

Q. What is your relationship officially to the advertising that is carried on the company's trucks? Have you anything to do with that?

A. I am the liaison man between Douglas Leigh Advertising and Railway Express Agency.

Q. What is the gross revenue annually of Express—of Railway Express Agency, approximately?

Mr. Elias: Objected to.

The Court: I will allow that.

A. Our revenue in 1944 was near the $400,000,000 mark.

Q. What was the gross revenue from advertising carried on the sides of trucks—

Mr. Elias: Objected to as incompetent, irrelevant and immaterial. There is nothing that makes it mandatory that advertising be paid for. I cannot see where it has any relevance to this case.

By the Court:

Q. Is the defendant engaged in the business of advertising?

A. Railway Express?

Q. Yes.

A. No, we are not; we have a contract with Douglas Leigh [fol. 100] Post Advertising. They have the franchise for the sale of the advertising placed on our vehicles.

Q. That is entirely apart from the transportation business?

A. Yes, sir.

Q. Your main business is transportation?

A. Yes.

Q. And you have made a contract with some firm to permit the vehicles to carry advertising?

A. We have made a contract with Douglas Leigh Post Advertising.

Q. That advertising is not necessarily related to the business of transportation?

Mr. Carson: I object to the form of your Honor's question.

The Court: I will sustain the objection.

By Mr. Carson:

Q. What was the gross revenue from advertising in New York City?

The Court: I will sustain an objection.

Q. Does the Railway Express Agency ever carry on the sides of trucks advertisements of its own business?

A. They do.

Q. Have you any corporate policy with respect to sending trucks out merely to carry ads?

Mr. Elias: I object.

The Court: I sustain the objection.

Q. Do you as an officer of the corporation know whether [fol. 101] or not trucks are ever circulated in New York City by the corporation empty merely to carry ads?

Mr. Elias: I object.

The Court: I will allow it.

A. We do not do anything of that sort. We do not move our trucks in and about the street for that purpose.

Q. Your trucks move exclusively to carry merchandise?

A. That's right.

Q. Do you know, as an officer of the corporation, whether or not the trucks of the Agency carry from time to time, off and on, the articles which are advertised on the side of the trucks?

A. I do not know that.

Q. Is that done?

A. (No answer.)

Q. Did they do so in this particular instance referred to in the complaint?

A. I am not in a position to say.

By Mr. Carson:

Q. You have no personal knowledge what was in these trucks on May 2nd?

A. No.

Q. I ask whether the Agency carried in its trucks the general merchandise advertised on the side?

A. They do.

Q. You spoke of a contract with Douglas Leigh having to do with the allotment of advertising on the sides of the trucks?

A. That is so.

Q. Does that contract operate only in New York City or all over the country?

A. That is a nation-wide contract.

[fol. 102] Cross-examination.

By Mr. Elias:

Q. Mr. Marra, when was this contract with Douglas Leigh, indicated, signed?

A. Late in December, 1942.

Q. Do you know of your own knowledge whether there was a traffic regulation in existence then prohibiting the carrying of advertising on vehicles?

Mr. Carson: Objected to as immaterial and wrong in form.

The Court: Objection sustained.

Q. How long have you been with Railway Express Agency, Inc., or its predecessors?

A. Approximately thirty years.

Q. Had you ever heard of this particular traffic regulation during the course of that time?

Mr. Carson: I object to it as immaterial. What difference does it make if the witness heard?

The Court: I will sustain the objection.

Q. Do you know what was carried on the three trucks that are involved in this instance?

A. I have no personal knowledge what was on those particular trucks.

Q. You do not know whether any of those trucks had anything on in any way related to the signs on the trucks?

A. No, I have no personal knowledge what was on the three trucks in question.

Mr. Carson: That is all.

[fol. 103] HARRY HANLON, called as a witness on behalf of the defendant, after being duly sworn, testified as follows:

Direct examination.

By the Court:

Q. What is your name?
A. Harry Hanlon.
Q. Where do you live?
A. 338 East 67th Street.
Q. What is your occupation?
A. Chauffeur.

By Mr. Carson:

Q. You are one of the drivers who operated the truck carrying the advertising on May 2nd referred to in the complaint?
A. Yes, sir.
Q. What did your truck contain that day, if you know?
A. We had a different quantity of goods; eggs, munition parts for workers at 22nd Street, and sea bags.
Q. Anything else?
A. Various packages I had of every description.
Q. Where did those shipments originate, if you know?
A. Mostly out of town—California, Washington, D. C.

Mr. Elias: No questions.

OTTO BRACHHOLD, called as a witness on behalf of the defendant, after being duly sworn, testified as follows:

Direct examination.

By the Court:

Q. What is your name?
A. Otto Brachhold.
[fol. 104] Q. Where do you live?

A. 58 Stratford Road, Brooklyn, New York.

Q. You are a photographer?

A. That's right.

By Mr. Carson:

Q. I hand you five photographs and ask you if you were present when they were taken?

A. Yes, I was.

Q. Will you state the time and place where these were taken?

A. Shall I refer to each number?

The Court: Is that on the day in question?

Mr. Carson: No.

Q. What date were they taken?

A. They were taken in the week of January 7th to 13th, 1945.

Q. What place, where?

A. On Flatbush Avenue, Brooklyn.

Mr. Elias: I object to this.

Mr. Carson: I offer in evidence these photographs of street cars carrying advertising run by the City of New York.

The Court: I sustain the objection.

Q. Are these correct representations of what you saw at that time?

Mr. Elias: I object.

A. They were.

[fol. 105] Mr. Carson: I ask that they be marked for identification.

The Court: What do you claim to be the development of them?

Mr. Carson: Official construction by the City which runs these cars of Section 124, which is our construction.

The Court: I sustain the objection.

(Exhibits marked Defendant's Exhibits K to O, for identification.)

By Mr. Carson:

Q. Have you within the last few days seen street cars in Brooklyn carrying advertising shown on these pictures?

Mr. Elias: I object

The Court: Objection sustained.

Mr. Carson: I ask your Honor to take judicial notice of the fact that the street cars are run by the Board of Transportation of the City of New York.

The Court: Suppose they are? Suppose somebody is unauthorized to do that?

Mr. Carson: That is all, your Honor.

The Court: Is that the case on both sides? Any further testimony?

Mr. Elias: Not on our part.

COLLOQUY

Mr. Carson: We would like a few days to submit our brief.

The Court: What are the points?

[fol. 106] Mr. Carson: I want to cite to your Honor the cases with reference to the construction of Section 124. The essential point is, of course, that trucks run by this company in the operation of its business to carry merchandise are not advertising vehicles, and in fact, the ordinance so says. The ordinance says to be an advertising vehicle it has to carry it merely or mainly for advertising. As I remember, there has been four different decisions.

The Court: Has there been any decision interpreting this regulation?

Mr. Elias: Yes, by the Court of Appeals, United States Supreme Court, with a slight change in beginning the words, but not the latter part. The part that holds whether it is incidental to their business, that has been interpreted by the Court of Appeals. (Fifth Avenue Coach, New York 194, New York 19; affirmed by the Supreme Court, 221 U. S.) The antecedent of this particular regulation, which was Section 79, I believe, the traffic regulations, was adjudicated in People v. Kerns, 168 Misc. 264, and I believe likewise People v. Berkowitz.

Mr. Carson: There are about four or five cases. People vs. Berkowitz, as I remember, was one in which a wagon was driven up the street, empty, carrying advertising on the side, and held to be a violation of the ordinance. An-

other case is where a union drove an empty truck around the streets and carried advertising; held a violation of the [fol. 107] ordinance. Magistrate Harris in this court with reference to the American Railway Express; that it was not in violation of this ordinance. It is referred to in an opinion of Magistrate Aurelio, who held that it was a violation of the ordinance.

Now, the Fifth Avenue Coach Company case Mr. Elias talks about went from Special Term of the Appellate Division to the Court of Appeals and the Supreme Court of the United States, in which court it was held that the coaches of the Fifth Avenue Company, running up Fifth Avenue, couldn't legally carry advertising on the side for the reason that the company had no authority, so construed by judicial construction of its charter. I want particularly to call your Honor's attention to the language of the Appellate Division in that case. All of the Judges said as a matter of construction of the ordinance itself, the Fifth Avenue advertising was not a violation, but all the courts said that the Fifth Avenue Coach couldn't get an injunction against the enforcement of the ordinance; had no standing in equity; had no power by its charter to carry advertising.

Mr. Elias: The Fifth Avenue Coach Company case, page 29, the court said: "Heretofore engaged in the transportation of passengers and at the same time running advertising wagons. The exterior advertisements carried by it are [fol. 108] not seen by its passengers; are such as can be seen in the streets of the city and Central Park where the view is not obstructed by distance." At page 30 the court continued: "The extent and detail of these advertisements when left wholly in the control of those contracting therefor would make such stages, wagons or cars now show a display of advertisements and would clearly produce congestion on the streets. It was for the express purpose of attracting and claiming attention of the people on the streets." Further, on the very point that Mr. Carson has remarked here, about the fact that it may be only incidental to their business, the court said: "The second sentence of the ordinance is part of the same paragraph. The two sentences read together show the intention of the Legislative body. It appears evidence in itself that it was not intended to refer exclusively to wagons wholly used for the display of advertisements,

business notices upon ordinary business wagons, which are not prohibited, so long as said wagons are engaged in the usual work of the business of the owner, when even such notices are prohibited on wagons used merely or mainly for advertising. General advertising for hire is by the ordinance prohibited, whether carried on wagons wholly used for advertising or in connection with the [fol. 109] ordinary or usual business in which the wagons are engaged."

(At this point the Court asked both counsels to submit briefs and adjourned the case to July 2, 1945, 12 A. M. at Jefferson Market Court, Sixth Avenue and 10th Street, New York City.)

I hereby certify that the foregoing transcript is a true and correct copy of my stenographic notes.

Samuel Danziger, Official Court Stenographer.

[fol. 110] JEFFERSON MARKET COURT

Brought Over from Traffic Court Manhattan, for Decision—July 2, 1945

Before: Mag. Morris Rothenberg.

PEOPLE ON COMPLAINT OF GEORGE W. HORNER,

vs.

RAILWAY EXPRESS AGENCY, INC.

The Charge: Violation of Traffic Regulation—Advertising.

This case was tried in the Traffic Court, Manhattan, on June 29, 1945, before Magistrate Morris Rothenberg, and adjourned for decision to the Jefferson Market Court on July 2, 1945 at 12 noon.

Appearances: For the People: Asst. Corp. Counsel Sylvan H. Elias. For the Defendant: Davis, Polk, Wardwell, Sunderland & Kiendl, by Ralph M. Carson, 15 Broad Street, New York, N. Y.

[fol. 111] The Court: Do you want to add anything to what you have submitted in your briefs?

Mr. Elias: On page 7 of my brief, I mentioned the decision in the Calfapietra case, and I mentioned that it was affirmed by the Appellate Division on April 8th.

Since that time it also has been affirmed by the Court of Appeals.

The Court: Is there anything else you want to say?

Mr. Elias: No, sir.

The Court: Do you wish to say anything?

Mr. Carson: In connection with the Corporation Counsel's remarks, I might remind Your Honor that the Court of Appeals, in a case cited in our brief, has said that the Police Commissioner's power to make regulations having the force of law, is conditioned upon their being reasonable.

The construction which the Corporation Counsel urges Your Honor to put on this regulation, as we have shown, would be unreasonable.

But we primarily, without waiving our constitutional rights, urge upon Your Honor to apply the regulation as written, to allow the Railway Express Agency to carry business notices, not only its own, but those of others, in the prosecution of its business of carrying goods, because those notices relate to the goods it carries.

I think we have made that point.

The Court: I am of the opinion that the traffic regulation [fol. 112] in question was intended to prohibit the type of advertising in which the defendant is engaged, on their delivery motor vehicles.

The Defendant is found Guilty. I'll listen to you on the question of fine.

This is obviously a case for appeal.

Mr. Carson: Yes, sir.

The Court: I am of the opinion that the regulation has been violated. Now do you wish to say anything on the question of fine?

Mr. Carson: On the question of fine, we urge that since the defendant acted in good faith on the advice of counsel and will appeal this case promptly, the fine should either be nominal, or there should be a suspended sentence.

Mr. Elias: Your Honor, I feel that they have been a constant violator and that therefor they should be given the maximum fine.

The Court: This is the first time it has been tested, isn't it?

Mr. Elias: As far as the corporation goes, yes, but——

The Court: I'll impose a $25.00 fine.

Mr. Carson: We ask for a stay of execution, pending appeal.

The Court: You don't need that. You may pay your fine under protest and your rights are preserved.

I hereby certify that the foregoing is a correct transcript of my notes in the above case.

Joseph A. Zinman, Official Stenographer.

[fol. 113] Manhattan Traffic Court, City Magistrates' Courts, City of New York

People of the State of New York, On complaint of various police officers,

vs.

Charles Gerchario, Michael Long, and 11 others

Testimony

Feb. 28, 1946

Docket No. 623. Complaining Officer, George A. Liedvogel; Defendant, Emil Hugo Miller.

Docket No. 624. Complaining Officer, George A. Liedvogel; Defendant, Chas. A. Harrington.

Docket No. 625. Complaining Officer, George A. Liedvogel; Defendant, Frederick Reilly.

Docket No. 626. Complaining Officer, George A. Liedvogel; Defendant, Howard Broems.

Docket No. 628. Complaining Officer, Andrew Bengston; Defendant, Edward Halloran.

Docket No. 629. Complaining Officer, Andrew Bengston; Defendant, Thomas McCabe.

Docket No. 630. Complaining Officer, Andrew Bengston; Defendant, Milton Mulhare.

Docket No. 631. Complaining Officer, Andrew Bengston; Defendant, Jeremiah McCarty.

Docket No. 632. Complaining Officer, Denis F. Gallagher; Defendant, Michael Long.

Docket No. 633. Complaining Officer, Denis F. Gallagher; Defendant, George Bauer.

Docket No. 634. Complaining Officer, Denis F. Gallagher; Defendant, Charles Gerachio.

Docket No. 642. Complaining Officer, John McCarthy; Defendant, Herman Gipes.

Docket No. 643. Complaining Officer, John McCarthy; Defendant, John Murray.

[fol. 114] All these defendants were arraigned on Jan. 2, 1945, but the cases were adjourned from time to time and came up today, Feb. 28, 1946, for trial. The assistant corporation counsel and counsel for defendants declared they were ready.

APPEARANCES:

Sylvan Elias, Esq., Assistant Corporation Counsel, For the People.

Ralph M. Carson, Esq., Davis, Polk, Wardwell, Sunderland & Kiendl, For Defendants.

Feb. 28, 1946.

Before Hon. Raphael Koenig, City Magistrate

Mr. Elias: All are charged with a violation of Art. 9, Par. 124 of the Traffic Regulations; Display Advertising.

Mr. Carson: Your Honor, there are a number of controlling questions of law here. The Corporation Counsel and ourselves have prepared briefs which I would like your Honor to see in advance of the presentation of the evidence.

The Court: What are the circumstances?

Mr. Elias: I do not think there will be any dispute on the facts.

STIPULATIONS AS TO FACTS

The Court: Can you stipulate as to the facts and also [fol. 114] stipulate that the nine proceedings be tried together and that separate judgments be rendered?

Mr. Carson: That is satisfactory to the defendants. I would like to read into the record or hand to your Honor an answer on behalf of each of the nine defendants.

The Court: What is the charge?

Mr. Elias: It is a violation of Sec. 124 of Article 9 of the Traffic Regulations of the City of New York, that prohibits

advertising vehicles. And we claim that these men—all of whom were drivers of Railway Express Agency trucks—were driving those particular trucks carrying advertising on their sides. This constitutes a violation of the particular section with which they are charged.

The Court: What advertising was it? Is the officer here?

Mr. Elias: Yes; I have all my witnesses.

Police Officer: One advertisement said on the sign: "National Velvet with Mickey Rooney in the Cast." The other says: "Prince Albert" on the sign. The other says: "National Velvet." They say "National Velvet" on the right side; they say "Prince Albert" on the other. Another one "National Velvet." All "National Velvet" and other side "Prince Albert." The signs are about three to four feet long and about three feet wide. About four feet square.

Mr. Carson: Were they smaller than the side of the truck?

Police Officer: Yes, sir.

Mr. Carson: Did you look into the truck to see what they were carrying?

[fol. 116] Police Officer: They had merchandise, cases, this and that.

Mr. Carson: They were all loaded?

Police Officer: Yes, sir.

Mr. Carson: You did not open the cases to see what they were?

The Court: In other words, it is stipulated that these trucks were in operation by the corporation, driven by these defendants and had on the side the signs enumerated by the police officer and were also engaged in the business of the corporation.

Mr. Carson: That they were transporting merchandise which was not inspected by the police officers. That is true in all cases.

The Court: Is that the stipulation in which you desire to enter?

Mr. Elias: Yes.

The Court: Anything additional?

Mr. Carson: I would like to have it stipulated that, as testified by the secretary of the corporation in a prior case, the corporation had, pursuant to the action of the board of directors authority to enter into advertising contracts.

Mr. Elias: I cannot stipulate as to that. He might have

testified to that. I would like to make an objection to that admission.

The Court: Subject to objection of this stipulation, is that correct?

Mr. Elias: Because as a matter of law, I do not think there is anything in their charter which can authorize them to do anything contrary to our law or regulations. We feel that the particular points in this case have been adjudicated. [fol. 117] The case came up before Magistrate Rothenberg six months ago against the Railway Express Agency. He found them guilty. That case is on appeal, although not yet effected. We believe the interpretation of this section has been adjudicated.

The Court: I am trying to dispose of the taking of testimony.

Mr. Carson: The Corporation Counsel might stipulate as to the same evidence in this case given by Mr. Merry and Mr. Wilcox in the case he referred to.

Mr. Elias: I have no objection to concede that if they were called to testify, they would testify the same way.

The Court: I will read the briefs and notify counsel when to appear. I am here only for today. Argument will be held at 100 Centre St. When I am sitting there, I will have the clerk notify you.

Mr. Elias: Will you then concede that the officers in these cases, if called to testify, would testify that on December 28, 1944, in front of the different premises located within the City and County of New York, they saw trucks of the Railway Express Agency, Inc., driven by the respective defendants in these cases, and that each one of these trucks carried signs on the exterior of the vehicles, displaying things other than Railway Express Agency, Inc.

Mr. Carson: Yes, we will so concede.

The Court: The nature of the advertising has been described.

Mr. Elias: If that is so, it might be convenient for the court also to include the other four cases.

[fol. 118] Mr. Carson: I am perfectly willing.

Mr. Elias: All the same point. The only reason we adjourned it is because the police officer has retired.

(Court attendant read the following:)

Charles Arthur Harrington, Docket 624 (1945)
Frederick Reilly " 625 "
Emil Miller " 623 "
Howard Broems " 626 "

Mr. Carson: The same stipulation we made applies to these four cases.

Mr. Elias: That is correct.

Mr. Carson: It is stipulated that the same exhibits offered in the Railway Express Agency, Inc. cases, heretofore referred to, are to be deemed offered here in behalf of each of these defendants.

Mr. Elias: Yes; on behalf of the defendants. As far as the People are concerned, we are merely offering in evidence a certified copy of the Traffic Regulations promulgated by the Police Commissioner.

Mr. Carson: We will concede it.

Mr. Elias: In particular, Section 124.

Mr. Carson: In respect of each of these 13 defendants and in connection with the stipulation Mr. Elias has cited as to the trucks and their advertising, I take it that it is conceded by the People that each of these trucks was engaged at the time of the service of the summons in that conduct of the ordinary business of the Railway Express Agency.

[fol. 119] Mr. Elias: Yes.

Mr. Carson: On behalf of each of these defendants, I would like to read into the record, or have it deemed read, the answer I hold in my hand, which was involved in the last cases. I am perfectly willing to read it in or hand it to your Honor.

The Court: It will be received as an answer.

Mr. Carson: For each of the 13 defendants.

The Court: Yes; and made part of the record.

In other words, the sole question of law is, whether this regulation applies to the defendants engaged in the business of the corporation and having the specified advertising on the outside of the trucks.

Mr. Carson: That idea is correct. We want to urge on you the correct interpretation of the language you have before you. We want to discuss the constitutionality of the regulation. We are considering it as the courts have construed it.

I hereby certify that the foregoing transcript is a correct copy of my stenographic notes.

Samuel Danziger, Official Court Stenographer.

[fol. 120] CITY MAGISTRATES' COURTS OF THE CITY OF NEW YORK

Traffic Court, Borough of Manhattan, County of New York

Charge: Violation of Traffic Laws—Section 124.

Docket Nos.

(Twelve Complaints)

[SAME TITLE]

Stenographer's Minutes

New York, March 28, 1946.

Before Hon. Raphael P. Koenig, City Magistrate

Appearances: Sullivan H. Lewis, Esq., Assistant Corporation Counsel, Municipal Building, Borough of Manhattan, City, County and State of New York, For The People. Davis, Polk, Wardwell, Sunderland & Kiendl, Esqrs., Counselors at Law, Ralph M. Carson, Esq., of Counsel, 15 Broad Street, City, County and State of New York, For the Defendants.

James H. G. Green, Official Court Stenographer.

[fol. 121] PROCEEDINGS ON SENTENCE

. . . . . .

Appearances:

For the People: Sullivan H. Lewis, Esq., Assistant Corporation Counsel, Municipal Building, Park Row, Borough of Manhattan, City, County and State of New York.

For the Defendants: Davis, Polk, Wardwell, Sunderland & Kiendl, Esqrs., Counselors at Law; Ralph M. Carson, Esq., of Counsel, 15 Broad Street, Borough of Manhattan, City, County and State of New York.

The Court: Well, this case is now on before me for sentence; is that right?

Assistant Corporation Counsel: Yes, your Honor.

Counsel for Defendants: With separate judgment to be rendered in the case of each defendant.

Assistant Corporation Counsel: If your Honor pleases, these were thirteen prosecutions.

The Court: Yes. Do you want the argument taken down (to Counsel for defendants)?

Counsel for Defendants: Well, yes; I think we may as well have it taken down.

. . . . . .

[fol. 122] The Court: The sole question here is what kind of an automobile the vehicles were that the defendants were operating or driving; and I think a clear construction would be that it is a vehicle which has nothing to do with the business of the persons owning the vehicle making deliveries and advertising some other product. The matter may be determined by the proper court on appeal.

As far as the evidence is concerned (to Assistant Corporation Counsel), I don't suppose you are particularly interested in the penalty.

Assistant Corporation Counsel: I think it is entirely in your discretion. May I say just this, though?

The Court: Yes.

Assistant Corporation Counsel: There is no question, insofar as this particular traffic regulation is involved, the defendants' employers are persistent violators; and I think that your Honor should take that into consideration. But I believe a penalty your Honor fixed in each case, of course, will be all right.

Counsel for Defendants: I think that under all the circumstances it might be fair in these cases to suspend sentence in each.

[fols. 123-124] SENTENCE

The Court: Under the circumstances, I impose a fine of five dollars in each and every case; and I will adjourn each case until Monday for the fines to be paid at that time. Adjourned to April 1st, in Traffic Court, Manhattan; all fines to be paid on that date.

Assistant Corporation Counsel: I presume the question involved here is on appeal now. There are thirteen cases. The total is $65.

The Court: That is correct, and the fine in each case is to be paid on the adjourned date; namely: Monday, April 1st, 1946.

Counsel for Defendants: Yes, your Honor; the fines will all be paid at that time.

CERTIFICATION OF MINUTES

This is to certify that the foregoing is a true and correct transcript, taken from my original stenographic notes, of the proceedings had in the instant cases, heard before Hon. Raphael P. Koenig, City Magistrate, in War Emergency Court, Borough of Manhattan, City, County and State of New York, on the date therein set forth; namely: March 28th, 1946.

James H. G. Green, Official Court Stenographer, War Emergency Court, Borough of Manhattan, New York City, N. Y.

Dated May 27, 1946.

[fol. 125] CITY MAGISTRATE'S COURT OF THE CITY OF NEW YORK

Traffic Court: Borough of Manhattan

PEOPLE OF THE STATE OF NEW YORK, Plaintiff-Respondent,

against

RAILWAY EXPRESS AGENCY, INC., Defendant-Appellant

NOTICE OF APPEAL TO THE COURT OF APPEALS

SIRS:

Please take notice that pursuant to permission granted by Hon. John T. Loughran, Chief Judge of the Court of Appeals, on the 18th day of February, 1947, the defendant hereby appeals to the Court of Appeals from the order of the Court of Special Sessions of the City of New York, Appellate Part, First Judicial Department, entered in the office of the Clerk of said Court on the 21st day of January, 1947, which order affirms in all respects the judgment of conviction of the defendant upon the charge of violating Article 9, Sec-

tion 124 of the Traffic Regulations of the City of New York, and sentencing the defendant Railway Express Agency, Inc., to a fine of $25.00, and the defendant appeals from each and every part of said order as well as from the whole thereof.

[fol. 126] Dated, February 27, 1947, New York, N. Y.

Davis, Polk, Wardwell, Sunderland & Kiendl, Attorneys for Defendant-Appellant, Office and Post Office Address, 15 Broad Street, Borough of Manhattan, City of New York 5, N. Y.

To: Charles E. Murphy, Esq., Corporation Counsel of the City of New York, Attorney for Plaintiff-Respondent, Municipal Building, Borough of Manhattan, New York City, N. Y.; Frank Hogan, Esq., The District Attorney, New York County; The Clerk of the Appellate Part of the Court of Special Sessions, Criminal Courts Building, 100 Centre Street, Borough of Manhattan, New York City, N. Y.; The Chief Clerk of the Magistrate's Court.

[fol. 127] City Magistrate's Court of the City of New York

Traffic Court: Borough of Manhattan

People of the State of New York, Plaintiff-Respondent,

against

Charles Gercharo, Michael Long, and 11 others, Defendants-Appellants

Notice of Appeal to the Court of Appeals

Sirs:

Please take notice that pursuant to permission granted by Hon. John T. Loughran, Chief Judge of the Court of Appeals, on the 18th day of February, 1947, the defendants hereby appeal to the Court of Appeals from the order of the Court of Special Sessions of the City of New York, Appellate Part, First Judicial Department, entered in the office of the Clerk of said Court on the 21st day of January, 1947, which order affirms in all respects the judgment of conviction of the defendants upon the charge of violating Article

9, Section 124 of the Traffic Regulations of the City of New York, and sentencing the defendants Charles Gerchario, Michael Long, and 11 others, to a fine of $5.00 each, and the defendants appeal from each and every part of said order as well as from the whole thereof.

[fol. 128] Dated, February 27, 1947, New York, N. Y.

Davis, Polk, Wardwell, Sunderland & Kiendl, Attorneys for Defendants-Appellants, Office and Post Office Address, 15 Broad Street, Borough of Manhattan, City of New York 5, N. Y.

To: Charles E. Murphy, Esq., Corporation Counsel of the City of New York, Attorney for Plaintiff-Respondent, Municipal Building, Borough of Manhattan, New York City, N. Y.; Frank Hogan, Esq., The District Attorney, New York County; The Clerk of the Appellate Part of the Court of Special Sessions, Criminal Courts Building, 100 Centre Street, Borough of Manhattan, New York City, N. Y.; The Chief Clerk of the Magistrate's Court.

[fol. 129] At an Appellate Part of the Court of Special Sessions of the City of New York, held in and for the First Judicial Department, in the County of New York on the 21st day of January, 1947

Present: Hon. George B. DeLuca, Hon. William B. Northrop, Hon. Nathan D. Perlman, Justices.

Docket No. 65—NY—45

THE PEOPLE OF THE STATE OF NEW YORK, Respondent,

against

RAILWAY EXPRESS AGENCY, INC., Appellant

ORDER OF AFFIRMANCE

Heretofore, and on the 2nd day of July, 1945, the defendant-appellant, Railway Express Agency, Inc. having been tried and convicted upon the charge of Vio. Art. 9, Sec. 124 of the Traffic Regulations of the City of New York by Hon. Morris Rothenberg, a City Magistrate, at the Traffic District City Magistrates' Court, in the Borough

of Manhattan, City of New York, and sentenced as follows: $25.00 fine and an appeal from the judgment aforesaid having been taken to this Court by Railway Express Agency on the 30th day of July, 1945, and the said appeal having [fol. 130] been argued by Messrs. Davis Polk Wardwell Sunderland & Kiendl of counsel for the Appellant, and by Mr. John J. Bennett (Mr. Seymour B. Quel, Mr. Stanley Buchsbaum) of counsel for the Respondent; and due deliberation having been had thereon, it is

Ordered and Adjudged, that the said judgment so appealed from be and the same is hereby in all respects affirmed. Opinion per curiam.

Enter.

(Sgd.) George B. DeLuca, Justice Presiding.

CERTIFICATION BY CLERK

Appellate Part of the Court of Special Sessions of the City of New York, 1st Judicial Department, Clerk's Office, County of N. Y.

I, D. V. Kelly, Opinion Clerk of the Court of Special Sessions of the City of New York, do hereby certify that the foregoing is a true copy of the order made by the Appellate Part of this Court upon the Appeal in the above entitled action or proceeding, and entered in my office on the 21st day of January, 1947 and that the papers upon which said appeal was heard are filed in this office.

Witness Whereof, I have hereunto set my hand and affixed the seal of said Court, in the County of N. Y., this 21st day of January, 1947.

D. V. Kelly, Opinion Clerk.

[fol. 131] At an Appellate Part of the Court of Special Sessions of the City of New York, held in and for the First Judicial Department, in the County of New York on the 21st day of January, 1947

Present: Hon. George B. DeLuca, Hon. William B. Northrop, Hon. Nathan D. Perlman, Justices.

Docket No. 29—NY—46

THE PEOPLE OF THE STATE OF NEW YORK, Respondent,

against

CHARLES GERCHARIO, et al., Appellant.

ORDER OF AFFIRMANCE

Heretofore, and on the 28th day of March, 1946, the defendants-appellants, above named having been tried and convicted upon the charge of Vio. Art. 9, Sec. 124 of the Traffic Regulations of the City of New York by Hon. Raphael Koenig, a City Magistrate, at the Traffic District City Magistrates' Court, in the Borough of Manhattan, City of New York, and sentenced as follows: Each $5.00 fine and an appeal from the judgments aforesaid having been taken to this Court by above-named on the 16th day of April, 1946, and the said appeal having been argued by Messrs. Davis Polk Wardwell Sunderland & Kiendl of [fol. 132] counsel for the Appellants, and by Mr. John J. Bennett; Mr. Seymour B. Quel, Mr. Stanley Buchsbaum, of counsel for the Respondent; and due deliberation having been had thereon, it is

Ordered and Adjudged, that the said judgments so appealed from be and the same are hereby in all respects affirmed. Opinion per curiam.

Enter.

(Sgd.) George S. DeLuca, Justice Presiding.

CERTIFICATION BY CLERK

Appellate Part of the Court of Special Sessions of the City of New York, 1st Judicial Department, Clerk's Office, County of N. Y.

I, D. V. Kelly, Opinion Clerk of the Court of Special Sessions of the City of New York, do hereby certify that

the foregoing is a true copy of the order made by the Appellate Part of this Court upon the Appeal in the above entitled action or proceeding, and entered in my office on the 21st day of January, 1947 and that the papers upon which said appeal was heard are filed in this office.

Witness Whereof, I have hereunto set my hand and affixed the seal of said Court, in the County of New York, this 21st day of January, 1947.

D. V. Kelly, Opinion Clerk.

[fol. 133] Court of Special Sessions of the City of New York, Appellate Part—First Judicial Department

People of the State of New York, Respondent,

against

Railway Express Agency, Inc., Defendant-Appellant

People of the State of New York, Respondent,

against

Charles Gerchario and 12 Others, Defendants-Appellants

Opinion

Per Curiam:

The appeals herein are from judgments of conviction against the appellant Railway Express Agency, Inc. and thirteen individual appellants for violations of Section 124 of the Traffic Regulations of the City of New York. The thirteen individual appellants were drivers of trucks for the appellant Railway Express Agency, Inc. All fourteen cases have been consolidated for the purposes of appeal and are being treated as one appeal.

[fol. 134] Sec. 124 of the Traffic Regulations of the City of New York reads as follows:

"Sec. 124. Advertising vehicles.

No person shall operate, or cause to be operated, in or upon any street an advertising vehicle; provided that nothing herein contained shall prevent the putting of business notices upon business delivery vehicles, so long as such vehicles are engaged in the usual business

or regular work of the owner and not used merely or mainly for advertising."

The appellant Railway Express Agency, Inc. for some time past has, by contract with an advertising agency and for valuable consideration, permitted the use of the space on the exterior sides of its numerous trucks plying the streets of the City of New York, for general advertising purposes unconnected with its business. The claim is made on this appeal that Sec. 124 of the Traffic Regulations, correctly interpreted, does not prohibit such practice, and if it does, in such case the regulation is unreasonable and unconstitutional.

Insofar as the interpretation of the language of Sec. 124 is concerned, the opinion of the Court of Appeals in Fifth Avenue Coach Company v. The City of New York, 194 N. Y. 19, (1909) is controlling. In that case the method of advertising was exactly like that in the instant case, and the language of the ordinance in that case was substantially the same as the language of the regulation under consideration herein. The Court of Appeals held that the [fol. 135] ordinance prohibited general advertising for hire whether carried on vehicles wholly used for advertising or in connection with the ordinary or usual business in which the vehicles were engaged; th business notices on vehicles were not prohibited so long as the vehicles were engaged in the usual business or regular work of the owner, but even such notices were prohibited on vehicles used merely or mainly for advertising. By business notices, undoubtedly was meant business notices relating to the business of the owner while the vehicle was being used in the course of the owner's business, otherwise the second part of the ordinance would tend to nullify the prohibition contained in the first part thereof.

The Fifth Avenue Coach Company case was a suit in equity for an injunction against the enforcement of a penal ordinance. The Court in its opinion referred to the fact that the legisaltive charter provisions of the Fifth Avenue Coach Company did not contain authorization to engage in general advertising for hire. Appellant contends that this implies a holding by the Court that the plaintiff in that case had no standing in equity, and that this being a sufficient reason for ousting the plaintiff the remainder

of the opinion was obiter dictum. With this we do not agree. The interpretation of the ordinance was among the main issues litigated and the Court's opinion on this branch of the case constituted one of the several reasons for denying plaintiff the relief it sought. It was not obiter dictum. (Matter of Broderick v. City of New York, 295 N. Y. 363.)

The essential difference between the Fifth Avenue Coach Company case and the instant one is that on this appeal [fol. 136] we have before us a traffic regulation whereas in the Fifth Avenue Coach Company case the Court had a city ordinance under consideration. It is probably correct to say that an ordinance regulating the use of city streets may be sustained on broader grounds than a Police Department regulation which is adopted pursuant to the restrictive language of a provision of the Charter of the City of New York, in this case sec. 435 thereof.

The pertinent part of Sec. 435 of the Charter reads as follows:

> "Sec. 435. Department; duties.—The police department * * * shall have the power * * * to * * *; regulate, direct, control and restrict the movement of vehicular and pedestrian traffic for the facilitation of traffic and the convenience of the public as well as the proper protection of human life and health; * *. The commissioner shall make such rules and regulations for the conduct of pedestrian and vehicular traffic in the use of the public streets, squares and avenues as he may deem necessary * * *."

Appellant disputes the authority of the Police Commissioner to adopt regulation 124. Obviously, in order to sustain the validity of the regulation it must be found to come within the authority of the powers granted the Police Commissioner by Charter Section 435. In the Fifth Avenue Coach Company case the Court found that the display of advertising on vehicles passing through the public streets [fol. 137] tends to congestion thereon and to some extent interferes with those engaged in business or having their homes thereon. If the appellants' trucks can be covered on the outside with advertisements for hire, then the business delivery vehicles of all other owners engaged in their usual business or regular work can rightfully do likewise. The Court described in vivid language the effect of such

advertising on cars and vehicles of many descriptions and in great numbers in producing congestion upon the streets.

An additional consideration of great importance is the matter of safety. It cannot be doubted that advertising on vehicles daily using the streets of the city do constitute a distraction to vehicle drivers as well as the pedestrian public and do affect the safety of the public in the use of the streets. This element of safety comes directly within the power of the Police Commissioner contained in Sec. 435 of the Charter to regulate the movement of vehicular traffic for the convenience of the public as well as the proper protection of human life and health.

The point is made that in view of the Police Commissioner's authority to regulate the "movement" of vehicular and pedestrian traffic, the traffic regulation must be construed to be directed only to the movement of vehicles operated for no purpose but to carry advertising and not to the movement of vehicles being used in the business of the owner and incidently carrying advertising. We see no important distinction between the two situations. If movement is prohibited in the one case it can be in the [fol. 138] other, provided there is a reasonable basis for each restriction. The regulation prohibits the use of the streets by advertising vehicles of all kinds, whether merely or mainly used for advertising or for advertising not related to the owner's business but while the vehicle is being used in the course of his business. It is the advertising vehicle which is being restricted. It is not a matter of the extent to which a vehicle is used for advertising purposes.

The exception in the regulation permitting business notices of the owner on vehicles is a reasonable one. A distinction between general advertising for profit and business notices is a reasonable classification. (Central Lumber Co. v. South Dakota, 226 U. S. 157, 160; Waldorf-Astoria Hotel Co. v. The City of New York, 212 N. Y. 97, 107, 108; People v. Klinck Packing Co., 214 N. Y. 121, 136, 137.

It is our conclusion that the regulation bears a reasonable relationship to the subject of traffic control and public safety and that it reasonably comes within the charter grant of power to the Police Commissioner. In our opinion, the regulation is constitutional.

Accordingly, the judgments are affirmed.

(Sgd.) George B. DeLuca, Justice Presiding.

[fol. 139] IN COURT OF APPEALS OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, Respondent,

against

RAILROAD EXPRESS AGENCY, INC., Appellant

PEOPLE OF THE STATE OF NEW YORK, Respondent,

against

CHARLES GERCHARIO and 12 others, Appellants.

ORDER CERTIFYING QUESTIONS OF LAW AND GRANTING LEAVE OF APPEAL

Upon the orders made herein by the Appellate Part of the Court of Special Sessions of the City of New York, First Judicial Department, on January 21, 1947 in the above entitled fourteen cases consolidated for purposes of appeal, upon the opinion of said Court *per curiam* and all proceedings heretofore had in said fourteen cases and upon the annexed affidavit of Ralph M. Carson sworn to January 24, 1947,

It is, pursuant to Code of Criminal Procedure §520,

Certified that questions of law exist in said cases which ought to be reviewed by the Court of Appeals; and it is accordingly

[fol. 140] Ordered that the above named appellants and each of them have and are granted leave to appeal to the Court of Appeals from the respective judgments of conviction herein.

Dated, Albany, N. Y. February 18, 1947.

John T. Loughran, Judge of the Court of Appeals.

[fol. 141] IN COURT OF APPEALS OF NEW YORK

[Titles omitted.]

STIPULATION AS TO CONTENTS OF RECORD ON APPEAL

It is hereby stipulated, subject to the approval of the Court

(1) That in the preparation of the record on appeal herein the printing of the following exhibits be dispensed with:

[fol. 142] Exhibits of the Plaintiff, People of the State of New York

Exhibit No. 1.—Traffic Regulations promulgated by the Police Commissioner of the City of New York. (Article 9, Section 124.)

Exhibits Nos. 2A and 2B.—Stipulation as to facts for purposes of trial.

Exhibit No. 3.—Photograph of truck of Railway Express Agency, Inc., bearing license number 290413. On the left side was advertised the motion picture, "Without Love; Spencer Tracy and Katherine Hepburn; M. G. M."

Exhibit No. 4.—Photograph of right side of same truck, advertising "Ringling Brothers and Barnum and Bailey Circus."

Exhibit No. 5.—Photograph of truck of Railway Express Agency, Inc., bearing license number 290855. On the left side of the truck was advertised "I'd walk a mile for a Camel."

Exhibit No. 6.—Photograph of right side of same truck, advertising "Ringling Brothers and Barnum and Bailey."

Exhibit No. 7.—Photograph of truck of Railway Express Agency, Inc., bearing license number 291146. On the right side of the truck was advertised "W. O. R. tune in 710. This is Mutual."

[fol. 143] Exhibit No. 8.—Photograph of left side of same truck, advertising, "Ringling Brothers and Barnum and Bailey Circus."

Exhibits of Defendant, Railway Express Agency, Inc.

Exhibit A.—Copy of certificate of incorporation of the Railway Express Agency, Inc., dated December 6, 1928.

Exhibit B.—Minutes of the meeting of the Board of Directors of Railway Express Agency, Inc., dated October 27, 1942, authorizing the Company to enter into a contract for advertising.

Exhibit C.—Minutes of the meeting of the Board of Directors of Railway Express Agency, Inc., dated January 26, 1943, authorizing the Company to enter into a contract for advertising.

Exhibits D, E and F, for identification.—Performance cards of C. P. Dunn, J. A. Buckley and H. Hanlon dated May 2, 1945, operators of trucks owned by Railway Express Agency, Inc., photographed in People's Exhibits Nos. 3-8. Performance cards show the manner in which the trucks operated, showed they were also loaded, showed what they carried, and hours of operation.

Exhibit G, for identification.—Delivery record of Railway Express Agency, Inc., showing the deliveries to the Ringling Brothers and Barnum and Bailey Circus.

[fol. 144] Exhibits H, I and J, for identification.—Three delivery records of Railway Express Agency, Inc., showing deliveries to the Ringling Brothers and Barnum and Bailey Circus.

Exhibits K to O, for identification.—Five photographs of street cars carrying advertising, run by the City of New York. Photographs were taken on Flatbush Avenue, Brooklyn in the week of January 7th to 13th, 1945.

and that any party may refer to any of the said exhibits in its brief and submit any of them to the Court on the argument of this appeal with the same force and effect as if the same were printed in full in this record;

(2) That the appeals in the above-entitled actions be heard together on a combined record; and

(3) That an order to this effect may be entered without further notice.

Dated: New York, N. Y., February 27, 1947.

Davis Polk Wardwell Sunderland & Kiendl, Attorneys for Defendant-Appellant Railway Express Agency, Inc. and Attorneys for Defendants-Appellant Charles Gerchario, Michael Long and 11 others. Charles E. Murphy, Esq., Corporation Counsel of the City of New York, Attorney for Plaintiff-Respondent, People of the State of New York.

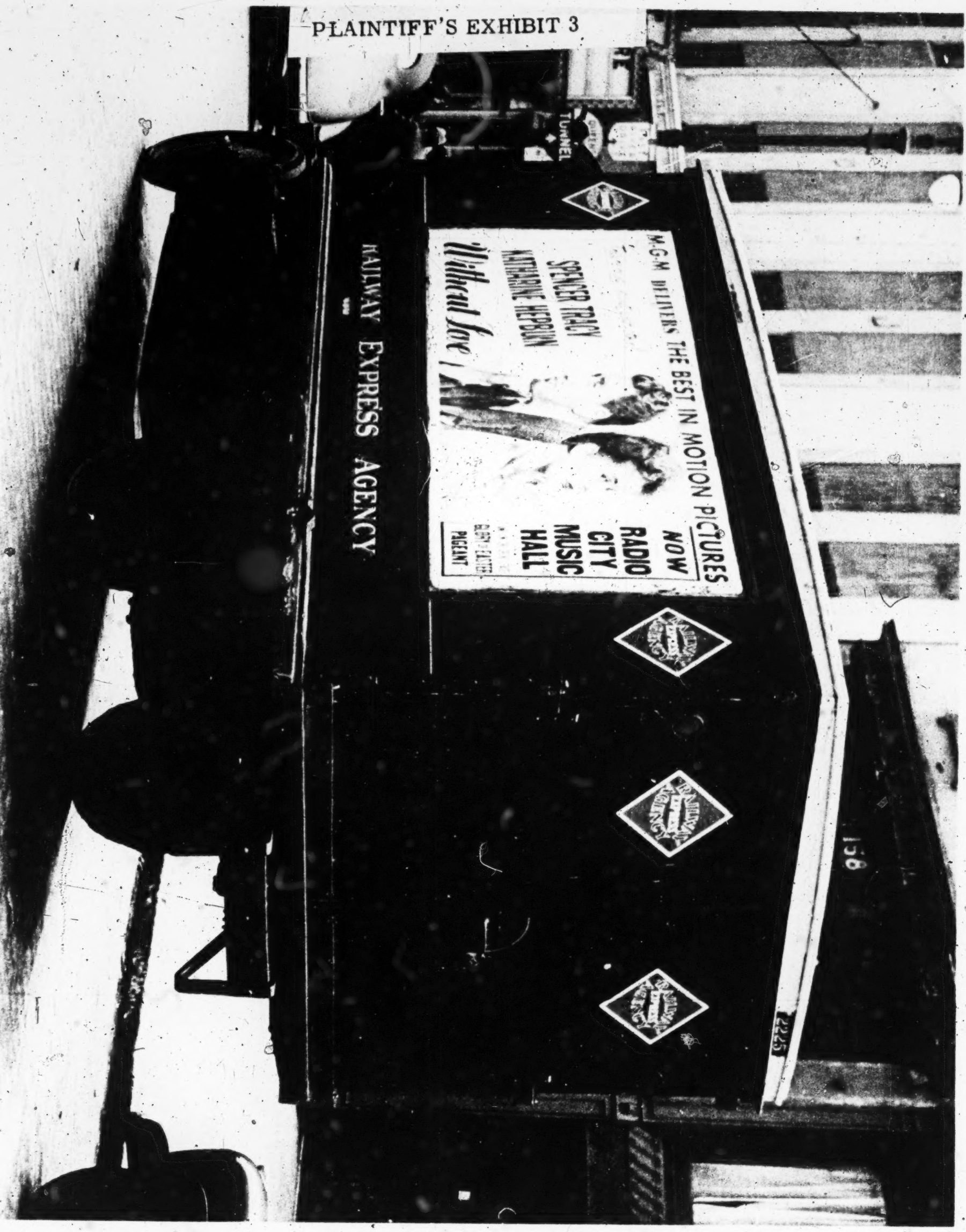
[fols. 145-146] STIPULATION WAIVING CERTIFICATION IN COURT OF APPEALS

Pursuant to Section 170 of the Civil Practice Act, it is hereby stipulated that the papers as herein printed consist of true and correct copies of the notices of appeal to the Court of Appeals, the orders of affirmance, the opinion of the Appellate Part of the Court of Special Sessions, First Department, and all the papers upon which said orders of affirmance and opinion are founded, all of which are now on file in office of the Clerk of the Appellate Part of the Court of Special Sessions, First Department, and certification thereof pursuant to Sections 458 and 532 of the Code of Criminal Procedure and otherwise is hereby waived.

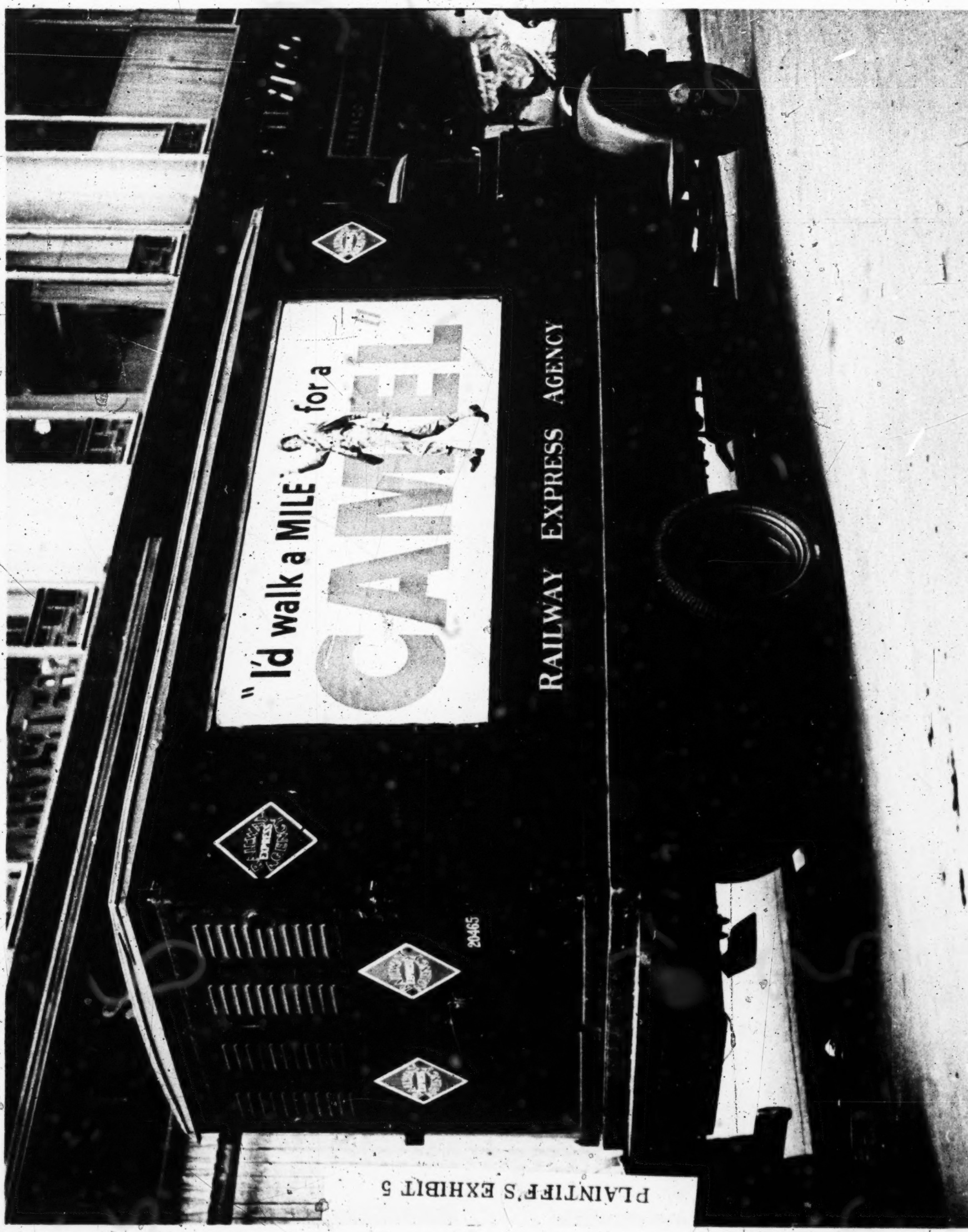
Dated: New York, N.Y., May 16, 1947.

Davis Polk Wardwell Sunderland & Kiendl, Attorneys for Defendants-Appellants. Charles E. Murphy, Corporation Counsel, Attorney for Plaintiff-Respondent.

PLAINTIFF'S EXHIBIT 3

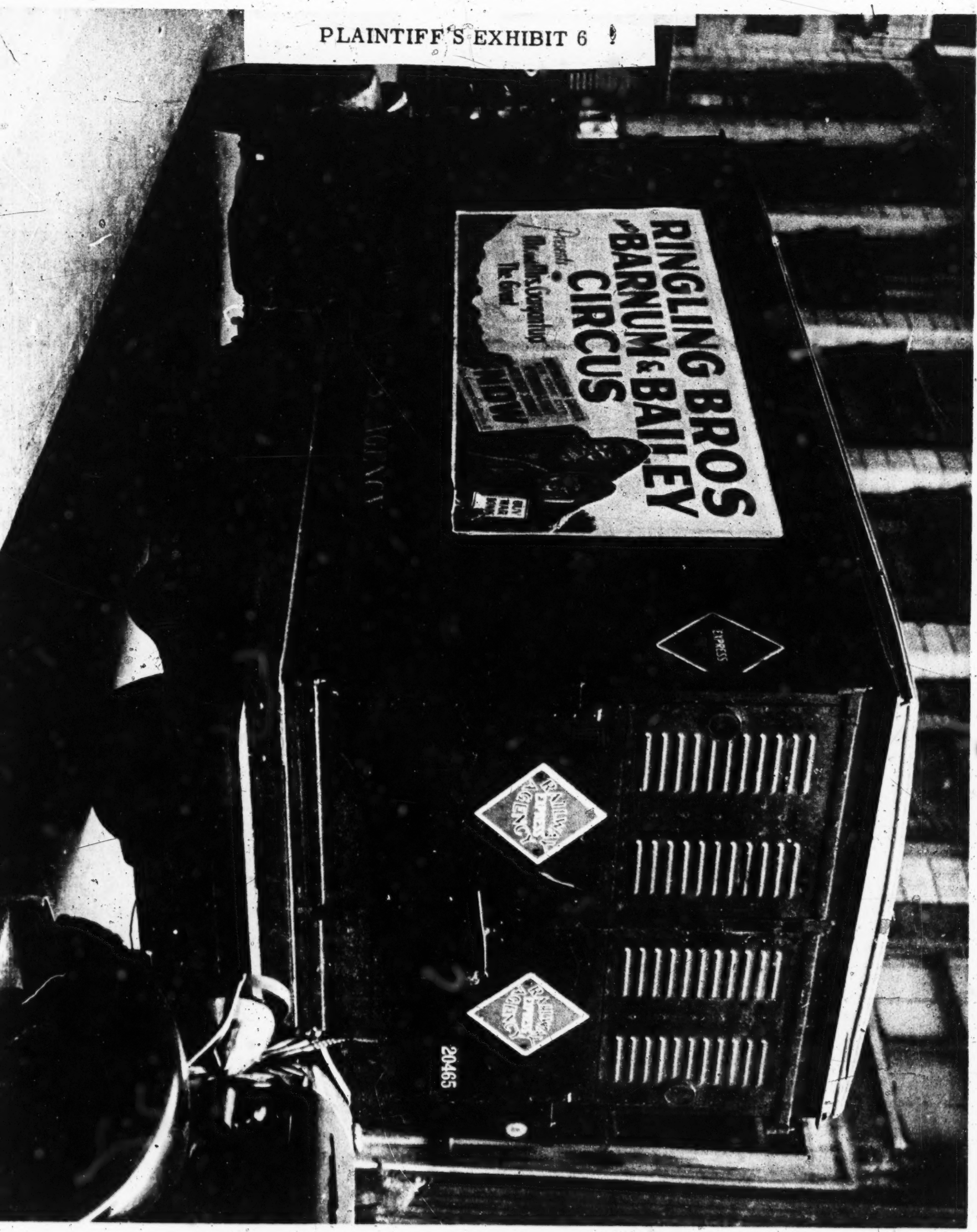


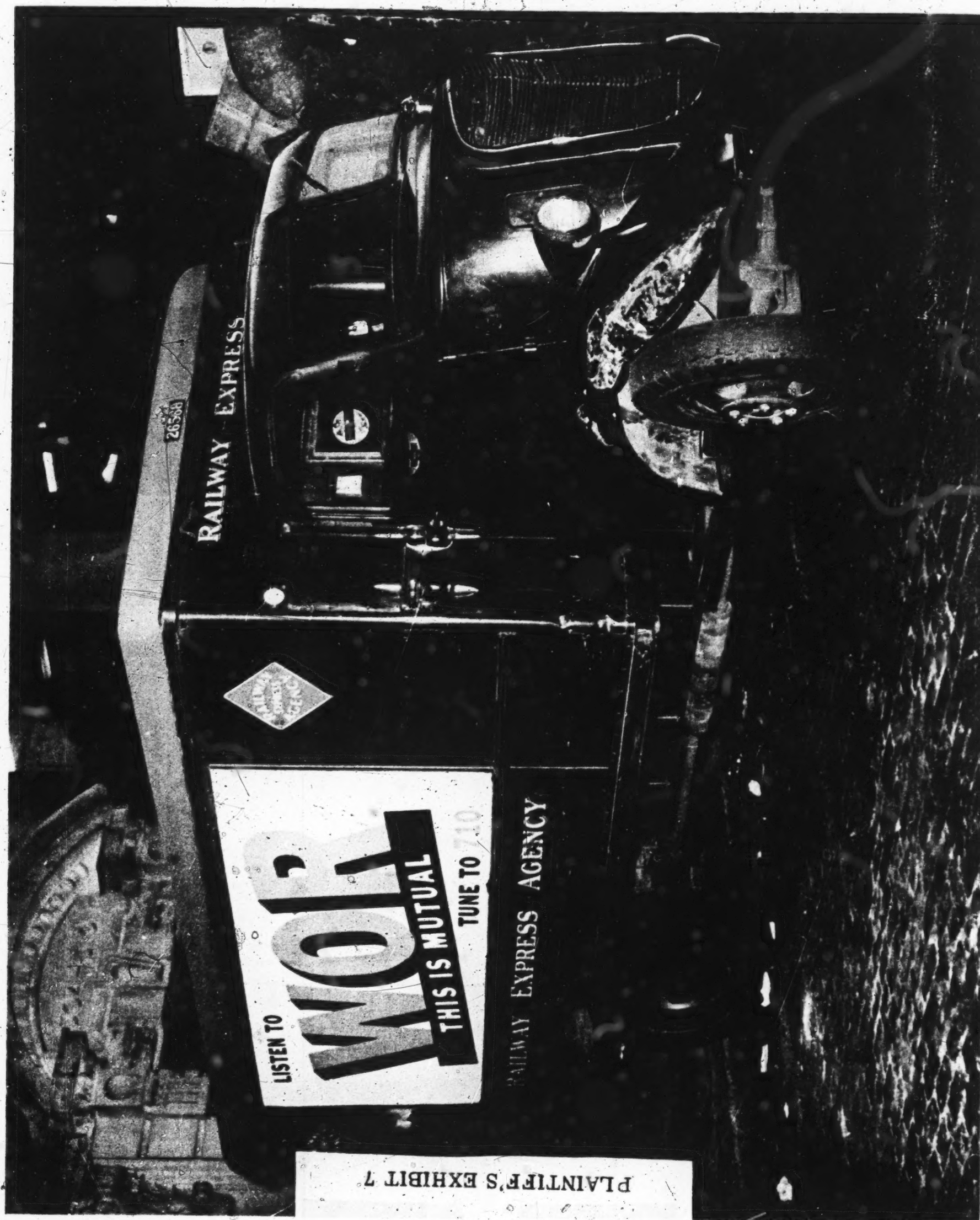
PLAINTIFF'S EXHIBIT 4



PLAINTIFF'S EXHIBIT 5

PLAINTIFF'S EXHIBIT 6





PLAINTIFF'S EXHIBIT 7

PLAINTIFF'S EXHIBIT 8

[fol. 154] DEFENDANT'S EXHIBIT "A"

Certificate of Incorporation of Railway Express Agency, Incorporated

[fol. 155] First. The name of this corporation is Railway Express Agency, Incorporated.

Second. The principal office or place of business of this corporation in the State of Delaware is located at No. 7 West 10th Street, in the City of Wilmington, County of New Castle.* The name and address of its resident agent is the Corporation Trust Company of America, No. 7 West 10th Street, Wilmington, Delaware.

Third. The nature of the business and the objects and purposes to be transacted, promoted and carried on by this corporation are:

1. To engage in, conduct and carry on in the State of Delaware, and in and between any and all of the States of the United States, the District of Columbia, the territories, colonies and possessions of the United States and in foreign countries as agent or otherwise, the express transportation business; and to handle, transport and forward by railroad, highway, water and air by means of such instrumentalities of transportation, carriage and conveyance as it may from time to time use, goods, wares, merchandise, money, bills, notes, bullion, packages, parcels and other movable personal property over and upon such lines and routes as may from time to time or at any time be established by it or with its approval, and in and between the points, communities and stations at which it may from time to time or at any time establish and continue agencies; and to acquire, have, possess and exercise all the powers, [fol. 156] privileges, rights and franchises necessary, appropriate or convenient for the aforesaid purposes, including all such as may be incident and proper for express carriers; with full power and authority to give such security in the nature of a general transportation bond or bonds as may be required by the laws of the United States and the

* Address of principal office has been changed to 100 West 10th St. and name and address of resident agent have been changed to Corporation Trust Company, 100 West 10th St.

regulations relating thereto for the transportation and delivery of dutiable merchandise and other property in bond from port to port in the United States or through the United States; and to take bonds of indemnity with or without security from its agents and employees;

2. To own, construct, purchase, lease or otherwise acquire and to use, equip, repair, supply and maintain railway cars, rolling stock and machinery of all kinds; also wagons, trucks, motor vehicles, airplanes and all other means and instrumentalities of transportation and conveyance by land, air and water; also ice houses, ice factories, refrigerating plants, warehouses and storage plants; also garages, stables, hangars, repair shops, storage yards, scales, platforms and other structures and appliances for the care, maintenance and repair of any of said equipment and facilities; and to sell, lease, sublet, rent or otherwise dispose of any of the aforesaid equipment, properties and instrumentalities or the use or service thereof;

3. To buy, exchange, contract for, lease and in any and all other ways acquire, hold and own, personal property of every character and description and to sell, mortgage, lease and otherwise dispose of same; and without restriction or limit as to amount to purchase or otherwise acquire, hold, own, use, improve, lease, mortgage, sell, convey or otherwise dispose of real property in any of the states, districts, territories, colonies and dependencies of the United States and in any and all foreign countries subject to the laws of such state, territory, colony, dependency or country.

[fol. 157] 4. To protect, preserve and care for, milk, cream, fruits, vegetables, meats and other perishable commodities, either while in transit or while in storage, including the icing, refrigeration, ventilation, loading, unloading, handling and storage of such commodities;

5. To engage in any kind of manufacturing business and to buy, exchange, contract for, lease, construct and otherwise acquire, take, have and own, and to sell, mortgage, lease or otherwise dispose of manufacturing plants and to manage, operate, maintain, improve and develop the same;

6. To apply for, obtain, register, purchase, lease or otherwise acquire and to hold, own, use, sell, assign, lease, grant licenses in respect of, mortgage and in any manner deal with or contract in reference to any copyrights, trade

marks, trade names, brands, labels, patent rights, patent processes, letters patent of the United States or of any foreign country, or any interest therein, and to use, operate and develop the same;

7. To acquire by purchase, subscription, exchange or otherwise and to hold for investment or otherwise, sell, assign, guarantee, transfer, mortgage, pledge or otherwise deal with or dispose of shares of the capital stock of, or any bonds, securities, debentures, obligations or evidences of indebtedness created by, any corporation or corporations organized under the laws of the State of Delaware or of any other state, district or country, and also bonds or evidences of indebtedness of the United States or of any state, territory, dependency, subdivision or municipality thereof, and while the owner thereof to exercise all the rights, powers and privileges of ownership, including the right to vote on such thereof as shall have voting rights; and to provide or aid in any manner, financially or otherwise, any corporation or association whose stocks, bonds or other evidences of indebtedness or securities are held in whole or in part or in any way guaranteed by this corporation; and for this [fol. 158] purpose to guarantee the contracts, dividends, stocks, bonds, notes and other obligations of such other corporations or associations; and to do any other acts or things designed to protect, preserve, improve or enhance the value of such stocks, bonds or other evidences of indebtedness;

8. To purchase, hold, sell and transfer shares of the capital stock, bonds or other obligations of this corporation to such an extent and in such manner and upon such terms as the Board of Directors of this corporation shall from time to time determine; provided that this corporation shall not use any of its funds or property for the purchase of its shares of capital stock, when such use would cause any impairment of the capital of this corporation; and provided, further, that shares of its capital stock belonging to this corporation shall not be voted directly or indirectly;

9. To organize or cause to be organized under the laws of the State of Delaware, or of any other state, district, territory, province or government, a corporation or corporations for the purpose of accomplishing any or all of the objects for which this corporation is organized, and to

dissolve, wind up, liquidate, merge or consolidate any such corporation or corporations or to cause the same to be dissolved, wound up, liquidated, merged or consolidated;

10. To purchase or otherwise acquire and to pay for in cash or in the stock, bonds, debentures, notes or other obligations of this corporation, all or any part of the business, good will, rights, assets and property, and to undertake or assume the whole or any part of the obligations or liabilities of any person, firm, association or corporation, and to manage, operate, maintain, improve and develop any such business and property; and to sell, mortgage, lease or otherwise dispose of the same;

11. To borrow money for any of the purposes of this corporation and to issue bonds, debentures, notes or other [fol. 159] obligations or evidences of indebtedness therefor and to secure the same by pledge or mortgage of the whole or any part of the property of this corporation, whether real or personal;

12. To loan money, and to enter into, perform and carry out contracts of every kind for any lawful purpose, with any person, firm, association or corporation, and to act as agent for any person, association, firm or corporation, and to draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, warrants, bonds, debentures, traveller's checks and other negotiable or transferable instruments and bills of lading, warehouse and other receipts;

13. To have and maintain one or more offices and to conduct and carry on any or all of its operations or business in any of the states, districts, territories, colonies and dependencies of the United States and in any or all foreign countries.

14. To carry on any other lawful business whatsoever which may seem to the Board of Directors of this corporation appropriate to be carried on in connection with the above purposes or calculated directly or indirectly to promote the interest of this corporation or enhance the value of its properties; and to have, enjoy and exercise all the rights, powers and privileges which are now or which may hereafter be conferred upon corporations formed under the same statutes as this corporation.

The foregoing clauses shall be construed both as objects and powers; and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of this corporation.

Fourth. The total number of shares of capital stock authorized is one thousand, which shares are without nominal or par value. Such stock may be issued by the corporation from time to time for such consideration as may be [fol. 160] fixed from time to time by the Board of Directors thereof.

The holder of any share or shares of stock of the corporation shall not sell, transfer or otherwise dispose of the same (other than to a successor corporation by consolidation, merger or purchase), without first offering such share or shares to the corporation for purchase at the price at which such shares were issued.

The subscription, purchase or other acquisition and the holding and ownership of shares of stock of this corporation shall, as far as may be lawful, be limited to the railroad corporations.

Fifth. The number of shares of capital stock with which this corporation will commence business is ten (10) shares without nominal or par value.

Sixth. The names and places of residence of each of the subscribers to the capital stock are as follows:

Name	Residence	Number of Shares
Marcus L. Bell	Noroton, Conn.	4
Henry W. Clark	New York, N. Y.	3
Frank C. Nicodemus, Jr.	Smithtown, N. Y.	3

Seventh. This corporation is to have perpetual existence.

Eighth. The private property of the stockholders shall not be subject to the payment of the corporate debts to any extent whatever.

Ninth. The number of Directors of this corporation shall be fixed by the By-laws and Directors shall be nominated as may be provided in the By laws, and the number of Directors as fixed by the By-laws and the method of nominating said Directors as fixed by the by-laws shall not be changed

[fol. 161] except with the consent of the holders of two-thirds of the stock of the corporation. Directors need not be stockholders. In case of an increase in the number of Directors, the additional Directors may be elected by the Board of Directors to hold office until the next annual meeting of the stockholders and until their successors are elected and qualified.

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized:

To make, alter, amend and rescind the By-laws of this corporation in the manner and subject to such limitations as are herein prescribed and as may be prescribed in said By-laws; to fix, determine and vary the amounts to be maintained as working capital or reserve funds to meet contingencies or for any other proper purpose; to authorize and cause to be executed mortgages and liens upon the real or personal property, or both, of this corporation.

If the By-laws so provide, to designate three or more of its members to constitute an Executive Committee, which Committee shall for the time being, as provided in the resolution of the Board creating it, or in the By-laws of this corporation, have and exercise, (except when the Board of Directors shall be in session), any or all of the powers of the Board of Directors in the management of the business and affairs of this corporation and have power to authorize the seal of this corporation to be affixed to all papers which may require it.

To sell, exchange, assign, convey or otherwise dispose of a part of the property, assets and effects of this corporation, less than the whole or less than substantially the whole thereof, on such terms and conditions as they shall deem advisable without the consent of the stockholders in writing or otherwise.

Pursuant to the affirmative vote of the holders of at least a majority of the stock issued and outstanding, given at a stockholders' meeting duly called for that purpose, or when [fol. 162] authorized by the written consent of the holders of at least a majority of the stock issued and outstanding, the Board of Directors shall have power and authority at any time to sell, lease or exchange all of the property and assets of this corporation, including its good will and its corporate franchise, upon such terms and conditions as its

Board of Directors deem expedient and for the best interest of the corporation.

This corporation may in its By-laws confer powers upon its Board of Directors in addition to the foregoing and in addition to the powers and authorities expressly conferred upon them by the laws of the State of Delaware.

Tenth. The stockholders and Board of Directors shall have power, if the By-laws so provide, to hold their meetings and to keep the books of this corporation (except such as are required by the laws of the State of Delaware to be kept in Delaware) and documents and papers of this corporation outside the State of Delaware and to have one or more offices within or without the State of Delaware at such places as may be designated from time to time by the Board of Directors.

Eleventh. This corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

We, the undersigned, being each of the original subscribers to the capital stock hereinbefore named for the purpose of forming a corporation to do business both within and without the State of Delaware, and in pursuance of the General Corporation Law of the State of Delaware, being Chapter 65 of the Revised Code of Delaware, and the acts amendatory thereof and supplemental thereto, do make and [fol. 163] file this certificate, hereby declaring and certifying that the facts herein stated are true, and do respectively agree to take the number of shares of stock hereinbefore set forth and accordingly have hereunto set our hands and seals this 6th day of December A. D., 1928.

In presence of Barbara Stoiber.

Marcus L. Bell (L.S.), Henry W. Clark (L.S.), Frank C. Nicodemus, Jr. (L.S.)

STATE OF NEW YORK,
County of New York, ss.:

Be it remembered, that on this 6th day of December, A. D. 1928, personally appeared before me, the subscriber, a notary public for the State of New York, Marcus L. Bell, Henry W. Clark and Frank C. Nicodemus, Jr., parties to the foregoing certificate of incorporation, known to me

personally to be such, and severally acknowledged that they signed, sealed and delivered the same as their several voluntary act and deed and that the facts therein stated were truly set forth.

Given under my hand and seal of office the day and year aforesaid.

Barbara Stoiber, Notary Public, New York County. County Clerk's No. 436, Reg. No. 0-75. Term expires March 30, 1930.

[fol. 164] DEFENDANT'S EXHIBIT "B"

Railway Express Agency, Incorporated
Office of Secretary, 230 Park Avenue, New York 17, N. Y.

I, E. R. Merry, Jr., Secretary of Railway Express Agency, Incorporated, do hereby certify that the following is a true and complete excerpt from minutes of regular meeting of the Board of Directors of said Railway Express Agency, Incorporated, held on October 27, 1942, at which a quorum was present and voted:

"Advertising on Company's Vehicles and Other Properties

"The President referred to the report he made at the meeting of this Board on August 25, 1942, regarding the contract for advertising on company's vehicles and other properties between Express Motion Poster Service, Inc., and Railway Express Agency, Incorporated, at which meeting the matter of negotiating a satisfactory arrangement with the Association of American Railroads or other advertisers or advertising agencies was left to him with power. He stated that, as he informally reported to this Board at its meeting of September 29th, he had secured from Express Motion Poster Service, Inc., an option to cancel as of October 31, 1942, its present contract with the Agency for the sum of $75,000, which option has been subsequently extended to and including November 30, 1942. He further stated that the Association of American Railroads is apparently not interested in utilizing the space on the sides of the Agency's motor vehicles; that consideration is now being given to three firm proposals; and that it is necessary to choose among these, and in any event desirable to cancel the contract with Express Motion Poster Service, Inc. He therefore recommended that he be authorized to exercise the

option with Express Motion Poster Service, Inc., for the cancellation of its contract with the Agency upon payment of not exceeding $75,000, and to negotiate a new contract upon the most favorable terms possible to the Agency.

"The matter was discussed, and on motion, duly made, seconded and carried, left to the President with power."

I further certify that the foregoing copy has been compared with the original minutes in the corporate minute books of Railway Express Agency, Incorporated and is found to be an accurate copy thereof.

In witness whereof, I have hereunto set my hand and affixed the corporate seal of said Railway Express Agency, [fol. 165] Incorporated, this 20th day of August, 1945.

E. R. Merry, Jr., Secretary. (Seal.)

[fol. 166] DEFENDANT'S EXHIBIT "C"

Railway Express Agency, Incorporated
Office of Secretary, 230 Park Avenue, New York 17, N. Y.

I, E. R. Merry, Jr., Secretary of Railway Express Agency, Incorporated, do hereby certify that the following is a true and complete excerpt from minutes of regular meeting of the Board of Directors of said Railway Express Agency, Incorporated, held on January 26, 1943, at which a quorum was present and voted:

"Advertising on Company's Vehicles and Other Properties

"The President referred to the authority granted him at the meeting of this Board of October 27, 1942, to exercise the option with the Express Motion Poster Service, Inc., to cancel its contract with Railway Express Agency, Incorporated for advertising on the Agency's vehicles and other properties upon the payment of not exceeding $75,000 and to negotiate a new contract upon the most favorable terms possible to the Agency. He reported that the option which had been extended to December 31, 1942, had been exercised as of December 24, 1942, by the payment to Express Motion Poster Service, Inc., of the sum of $43,464.67, being the net difference between the sum of $75,000 contemplated under the option and the net credits deducted therefrom, and that a general release of all claims and demands had been executed between the Agency and the Express Motion Poster Service, Inc., thus terminating as

of December 24, 1942, the Advertising Agreement, dated October 30, 1929, and effective January 1, 1930, between the Agency and Barron Collier and transferred and assigned by Barron Collier to Express Motion Poster Service, Inc., on January 3, 1930.

"The President further reported that as of December 31, 1942, he executed on behalf of the Agency a contract with Douglas Leigh, guaranteed by Douglas Leigh, Inc., and to be supported by a performance bond, covering advertising on the Agency's vehicles, effective on January 1, 1943, and terminating on February 28, 1949, with provision for earlier termination if the amounts paid to the Agency shall be less than graduated amounts stated in the contract, and subject to termination by six months' written notice after February 28, 1949. The gross revenues received under the contract are to be divided, after deducting approved advertising agency commissions and licenses and taxes levied on account of such advertising on the Agency's vehicles, on the basis of 75% to the Agency and 25% to Douglas Leigh. It is expected this contract will net the Agency at least $360,000 a year, or $1,080,000 over the 3-year period ending February 28, 1946, less the expense of placing posters on vehicles, for which period Douglas Leigh has secured a [fol. 167] contract with a national advertiser to display posters on one side of practically all of the Agency's vehicles, subject to termination at the end of the first and second years, if desired by the advertiser, upon payment of suitable premium. The other side is left free for other advertising, a few small contracts for which for short periods have been assigned over from the old contract and are being continued under the new advertising contract. Under the contract with Mr. Leigh, guaranteed by Douglas Leigh Inc., he is obligated to reimburse the Agency for the $43,464.67 which it paid to Express Motion Poster Service, Inc., for cancellation of the contract with that corporation."

I further certify that the foregoing copy has been compared with the original minutes in the corporate minute books of Railway Express Agency, Incorporated and is found to be an accurate copy thereof.

In witness whereof, I have hereunto set my hand and affixed the corporate seal of said Railway Express Agency, Incorporated, this 20th day of August, 1945.

E. R. Merry, Jr., Secretary. (Seal.)

[fol. 168] IN COURT OF APPEALS OF NEW YORK

297 N. Y. 703

THE PEOPLE OF THE STATE OF NEW YORK, Respondent

v.

RAILWAY EXPRESS AGENCY, INC., Appellant

THE PEOPLE OF THE STATE OF NEW YORK, Respondent,

v.

CHARLES GERCHARIO, EMIL H. MILLER, CHARLES A. HARRINGTON, Frank Reilly, Howard Broems, Edward Halloran, Thomas McCabe, Milton Mulhare, Jeremiah McCarty, Michael Long, George Bauer, Herman Gripes, and John Murray, Appellants

DECISION

Appeal, in the first above-entitled action, by permission of the Chief Judge of the Court of Appeals, from a judgment of the Court of Special Sessions of the City of New York, Appellate Part, in the first judicial department, entered January 21, 1947, which affirmed a judgment of the Magistrate's Court of the City of New York, Borough of Manhattan (Rothenberg, M.), convicting defendant corporation of violating section 124 of the Traffic Regulations of the City of New York. Appeal, in the second above-entitled action, by permission of the Chief Judge of the Court of Appeals, from a judgment of the Court of Special Sessions of the City of New York, Appellate Part, in the first judicial department, entered January 21, 1947, which affirmed a judgment of the Magistrate's Court of the City of New York (Koenig, M.), convicting the individual de-[fol. 169] fendants, drivers of the corporate defendant's trucks, of violating the same section. Section 124 provides: "No person shall operate, or cause to be operated, on or upon any street an advertising vehicle; provided that nothing herein contained shall prevent the putting of business notices upon business delivery vehicles, so long as such vehicles are engaged in the usual business or regular work of the owner and not used merely or mainly for advertising." Defendants' trucks, while carrying merchandise

in the regular course of the delivery business, bore advertising signs ranging from four feet square to four feet by ten feet. The corporate defendant is engaged in nationwide express transportation, and operates about 1,900 trucks in New York City. At least 80% of its general traffic to and from New York is interstate. Section 435 of the New York City Charter provides that the Police Department shall have the power and duty to "regulate, direct, control and restrict the movement of vehicular and pedestrian traffic for the facilitation of traffic and the convenience of the public as well as the proper protection of human life and health", and that the police commissioner "shall make such rules and regulations for the conduct of pedestrian and vehicular traffic in the use of the public streets, squares and avenues as he may deem necessary." In the Court of Appeals defendants contended that the regulation was in- [fol. 170] consistent with sections 10, 15 (Subds. 1, 19) and 90 of the Vehicle and Traffic Law; that the regulation was a burden on interstate commerce and deprived defendants of due process and the equal protection of the law; that defendants' trucks were not advertising vehicles within the meaning of the regulation; that the police commissioner's power was limited to the regulation of the movement of vehicles and did not allow a prohibition altogether of the movement of certain vehicles, and that there was neither a local law enacted by the City Council nor delegation by the Council under a local law to the police commissioner of power to make rules or regulations to carry out the law.

. . . . . .

Judgments affirmed; no opinion.

Concur: Lewis, Conway, Thacher and Dye, JJ. Dissenting: Loughran, Ch. J., Desmond and Fuld, JJ., on the ground that this regulation of the police commissioner, as interpreted to forbid these unobjectionable advertisements on defendants' trucks, is so entirely unrelated to traffic control as to be arbitrary as matter of law.

[fol. 171] In Court of Appeals of New York

State of New York, ss.:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 20th day of November, in the year of our Lord one thousand nine hundred and forty-seven, before the Judges of said Court.

Witness, The Hon. John T. Loughran, Chief Judge, Presiding.

John Ludden, Clerk.

Remittitur—November 21, 1947

[fol. 172] People &c., Respondent,

vs.

Railway Express Agency, Inc., Appellant

People &c., Respondent,

vs.

Charles Gerchario and 12 Others, Appellants

Be It Remembered, That on the 19th day of May, in the year of our Lord one thousand nine hundred and forty-seven, Railway Express Agency, Inc., and others, the appellants in these causes, came here unto the Court of Appeals, by Davis, Polk, Wardwell, Sunderland & Kiendl, their attorneys, and filed in the said Court, Notices of Appeal and return thereto from the judgments of the Court of Special Sessions of the City of New York. And People &c., the respondent in said cause, afterwards appeared in said Court of Appeals by Charles E. Murphy, its attorney.

[fol. 173] Which said Notices of Appeal and return thereto filed as aforesaid, are hereunto annexed.

Whereupon, The said Court of Appeals having heard these causes argued by Mr. Ralph M. Carson—of counsel for the appellants, and by Mr. Stanley Bucksbaum—of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the judgments appealed from herein be and the same hereby are affirmed.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the

Court of Special Sessions of the City of New York, there to be proceeded upon according to law.

Therefore, It is considered that the said judgments be affirmed as aforesaid —.

And hereupon, as well the Notices of Appeal and return thereto aforesaid as the judgment of the Court of Appeals [fol. 174] aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Court of Special Sessions of the City of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Court of Special Sessions before the Justices thereof, &c.

John Ludden, Clerk of the Court of Appeals of the State of New York.

Court of Appeals, Clerk's Office,
Albany, November 20, 1947:.

I Hereby Certify, that the preceding record contains a correct transcript of the proceedings in said causes in the Court of Appeals, with the papers originally filed therein, attached thereto.

John Ludden, Clerk.

[fols. 175-176] In Court of Appeals of New York

[Titles omitted]

Order Denying Motion for Reargument—January 15, 1948

A Motion for a re-argument of the above cause, having been heretofore made upon the part of the appellants herein, and papers having been duly submitted thereon, and due deliberation thereupon had:

Ordered that the said motion be and the same hereby is denied.

A Copy.

Raymond J. Cannon, Deputy Clerk.

[fol. 177] SIR:

Please Take Notice that the within is a true copy of an order entered this day in the office of the Clerk of the Court of Appeals of the State of New York.

Dated, January 15, 1948.

Yours, etc. John P. McGrath, Corporation Counsel, Attorney for Respondent, Municipal Building, Borough of Manhattan, City of New York.

To: Davis, Polk, Wardwell, Sunderland & Kiendl, Esqs.

[fol. 178] IN COURT OF APPEALS OF NEW YORK

[Titles omitted]

NOTICE OF ENTRY OF ORDER

SIR:

Please Take Notice, that an order of the Court of Appeals, of which the within is a true copy, was duly entered and filed in the Office of the Clerk of the Court of Appeals, Albany, New York, on the 15th day of January, 1948.

Dated: New York, N. Y., January 22, 1948.

Yours, etc., Davis, Polk, Wardwell, Sunderland & Kiendl, Attorneys for Defendants-Appellants, Office and Post Office Address, 15 Broad Street, New York 5, N. Y.

To: John P. McGrath, Esq., Corporation Counsel for the City of New York, Attorney for Plaintiff-Respondent, Municipal Building, Borough of Manhattan, New York, N. Y.
[fol. 179] Clerk of the Court of Special Sessions of the City of New York, Appellate Part, First Judicial Department, 100 Centre Street, Borough of Manhattan, New York, N. Y.

[fol. 180] In Court of Appeals of New York

Present, Hon. John T. Loughran, Chief Justice, Presiding.

The People &c., Respondent,

vs.

Railway Express Agency, Inc., Appellant

The People &c., Respondent,

vs.

Charles Gerchario, Michael Long and 11 others, Appellants

Order Amending Remittitur—January 15, 1948

A motion to amend the remittitur herein having heretofore been made upon the part of the appellants, papers having been submitted thereon and due deliberation having been thereupon had, it is

Ordered, that the said motion be and the same hereby is granted and the remittitur amended by adding thereto the following:

A question under the Federal Constitution was presented and necessarily passed upon by this Court, viz: Whether Article 9, Section 124 of the Traffic Regulations of the Police Commissioner of the City of New York is repugnant to the Fourteenth Amendment or to Article 1, Section 8, of the Constitution of the United States. This Court held that the Traffic Regulation aforesaid is not repugnant to said provisions of the Constitution of the United States.

[fol. 181] And the Court of Special Sessions of the City of New York, Appellate Part, First Judicial Department, is hereby requested to direct its Clerk to return said remittitur to this Court for amendment accordingly.

(Sd.) Raymond J. Cannon, Deputy Clerk. (Seal.)

[fol. 182] [Stamp:] A copy of the within paper has this day been received at the office of the Corporation Counsel, Jan. 23, 1948. John P. McGrath, Corporation Counsel.

[fol. 183] In Court of Appeals of New York

[Titles omitted]

Petition for Appeal to the Supreme Court of the United States

To the Chief Judge of the Court of Appeals of the State of New York:

Your petitioners, Railway Express Agency, Inc., a Delaware corporation authorized to do business in this State, and an interstate common carrier by motor vehicle, Charles Gerchario, Michael Long, Thomas McCabe, Milton Mulhare, Jeremiah McCarthy, George Bauer, Herman Gipes, John Murray, Howard Broems, Frank Reilly, Charles Harrington, Edward Halloran and Emil Hugo Miller, respectfully show:

1. Your petitioners are the appellants in the above-entitled consolidated causes.

2. On July 2, 1945, petitioner Railway Express Agency, [fol. 184] Inc., was convicted in the Magistrates Court of the City of New York of a charge of violating Section 124, Article IX, of the Traffic Regulations promulgated by the Police Commissioner of the City of New York, under the authority allegedly conferred upon him by Section 435 of the Charter of the City of New York, adopted by referendum and effective January 1, 1938.

3. On March 28, 1946, the remaining petitioners Charles Gerchario and others, were convicted of a charge of violating said Section 124 of the Traffic Regulations. At the time of their conviction, these petitioners were employed by and operated motor delivery vehicles of the petitioner Railway Express Agency, Inc.

4. Section 124, Article IX, of the Traffic Regulations of the City of New York reads:

"§ 124. Advertising vehicles.

No person shall operate or cause to be operated, in or upon any street an advertising vehicle, provided that

nothing herein contained shall prevent the putting of business notices upon such business delivery vehicles, so long as such vehicles are engaged in the usual business or regular work of the owner and not used merely or mainly for advertising."

5. All the petitioners were convicted of violating the foregoing Regulation on the ground that the vehicles operated by them displayed posters advertising things and events other than the business of petitioner Railway Express Agency, Inc. (Fols. 217, 350-51, 79, 80, 88, 89, 97, 98, 160, 161).

[fol. 185] 6. On July 27, 1945, the petitioner Railway Express Agency, Inc., filed in the Appellate Part of the Court of Special Sessions of the City of New York, First Judicial Department, notice of appeal from its conviction in the Magistrates Court (Fols. 7-18), and on April 12, 1946, the other petitioners filed similar notices of appeal in that Court (Fols. 19-30).

7. On January 21, 1947, the Court of Special Sessions affirmed, in a *per curiam* opinion, the judgments of conviction (Fols. 397-414), officially reported in 188 Misc. 324.

8. On February 18, 1947, Hon. John T. Loughran, Chief Judge of the Court of Appeals, granted permission to petitioners to appeal to that Court (Fols. 415-419). On February 27, 1947, pursuant to said permission, petitioners filed notice of appeal to the Court of Appeals in the Office of the Clerk of the Court of Appeals (Fols. 1-6).

9. On October 15, 1947, petitioners' appeal came on for argument in the Court of Appeals. On November 20, 1947, the Court of Appeals having heard said appeal, ordered and adjudged that the judgments appealed from be affirmed. Three members of the Court dissented on the ground, as stated in their memorandum opinion, that

> "This regulation of the Police Commissioner [Section 124, Article IX, Traffic Regulations of the City of New York], as interpreted to forbid these unobjectionable advertisements on defendant's trucks is so unrelated to traffic control as to be arbitrary as a matter of law."

[fol. 186] 10. On January 5, 1948, petitioners moved to reargue their appeal in the Court of Appeals, and to amend

the remittitur from said Court. On January 15, 1948, the Court of Appeals denied petitioners' motion to reargue their appeal in said Court, but granted petitioners' motion to amend the remittitur so as to read:

> "Questions under the Federal Constitution were presented and necessarily passed upon by this Court, viz: that Article 9, Section 124 of the Traffic Regulations of the Police Commissioner of the City of New York is repugnant to the Fourteenth Amendment and to Article 1, Section 8 of the Constitution of the United States. This Court held that the traffic Regulations aforesaid are not repugnant to said provisions of the Constitution of the United States."

Thereafter, on January 28, 1948, the remittitur was amended accordingly and, as amended, forwarded to the Court of Special Sessions of the City of New York.

11. The petitioners from the inception of these cases have asserted the unconstitutionality of Section 124 in the Magistrates Court, the Court of Special Sessions of the City of New York, and the Court of Appeals, as follows:

A. *Magistrates Court of the City of New York*

12. In its answer to the complaint served upon it (the other petitioners were served with summonses only), petitioner, Railway Express Agency, Inc., pleaded, among others, the following defenses (Fols. 193-95):

> "*For a Second Defense:*
>
> 3. Alleges that, if construed to prohibit the carrying of paid advertising by the defendant on its delivery vehicles while operated in the streets of New York [fol. 187] City in the transportation of merchandise in the usual conduct of the business of the defendant, § 124 of the Traffic Regulations is arbitrary, unreasonable and void, and exceeds the powers delegated by the State of New York to the City and to the Police Commissioner.
>
> *For a Third Defense:*
>
> 4. Alleges that, if construed as set forth in paragraph 3 hereof, § 124 of the Traffic Regulations would deprive

the defendant of its property without due process of law in violation of the State and Federal Constitutions.

For a Fourth Defense:

5. Alleges that the defendant, a corporation of the State of Delaware doing business in the State of New York, employs delivery vehicles in the City of New York preponderantly in the carriage of goods in interstate commerce, and carries paid advertising in its vehicles as an incident to the carriage of goods, and that § 124 of the Traffic Regulations, if construed as set forth in paragraph 3 hereof, would exceed the police powers of the State of New York and be an unconstitutional interference with interstate commerce."

13. In oral argument before Magistrate Morris Rothenberg, the following was stated by counsel for petitioner Railway Express Agency, Inc. (Fols. 332-334):

"Mr. Carson: In connection with the Corporation Counsel's remarks, I might remind Your Honor that the Court of Appeals, in a case cited in our brief, has said that the Police Commissioner's power to make regulations having the force of law, is conditioned upon their being reasonable.

The construction which the Corporation Counsel urges your Honor to put on this regulation, as we have shown, would be unreasonable.

But we primarily, without waiving our constitutional rights, urge upon Your Honor to apply the regulation as written, to allow the Railway Express Agency to carry business notices, not only its own, but those of others, in the prosecution of its business of carrying goods, because those notices relate to the goods it carries."

[fol. 188] B. *Court of Special Sessions*

14. In their Notices of Appeal, petitioners stated as grounds for appeal (Railway Express Agency, Inc., Fols. 11-13; Charles Gerchario, et al., Fols. 23-25):

"4. That under the construction put upon said § 124 by the Magistrate it violates the rights of the defendant

under the Fourteenth Amendment of the United States Constitution and Article I, Section 6, of the Constitution of the State of New York.

5. That the business delivery vehicles of the defendant (including those described in the information) using the streets of the City of New York preponderantly carry goods in interstate commerce and that the construction of said § 124 by the Magistrate constitutes an undue burden upon interstate commerce and exceeds the police power of the City of New York.

6. That under the construction put upon said § 124 by the Magistrate it deprives defendant of the equal protection of the laws in violation of the Fourteenth Amendment of the United States Constitution and Article I, Section 11 of the Constitution of the State of New York."

15. The *per curiam* opinion of the Court of Special Sessions affirming the judgments of conviction concludes as follows (Fols. 413, 414):

"It is our conclusion that the regulation bears a reasonable relationship to the subject of traffic control and public safety and that it reasonably comes within the charter grant of power to the Police Commissioner. In our opinion, the regulation is constitutional."

C. *Court of Appeals*

16. In the affidavit of Ralph M. Carson, of counsel to the petitioners, sworn to January 24, 1947 and submitted in [fol. 189] the Court of Appeals in support of the motion of petitioners for leave to appeal to the Court of Appeals, the following questions of law, among others, were said to be presented by the record and to be of such nature as to merit review by the Court of Appeals:

"(e) Whether a construction of § 124 adverse to the appellants would not be unconstitutional as (i) making an unreasonable and arbitrary distinction between business notices and general advertising, (ii) depriving Railway Express of its property in the use of the sides of delivery vehicles for advertising incidental to the

permitted transportation of goods, (iii) exceeding the powers delegated to the Police Commissioner under the New York City Charter (*Bus Depot Holding Corporation* v. *Valentine*, 288 NY 115), (iv) making an unreasonable classification between business notices and advertising in the exercise of the administrative duty of traffic regulation, (v) denying the appellants equal protection of the laws by reason of the arbitrariness of said distinction, and (vi) exceeding the police power of the City of New York and unduly burdening interstate commerce (*People* v. *Horton Motor Lines*, 281 NY 196)."

17. Upon the basis of said affidavit, the Chief Judge of the Court of Appeals granted leave to appeal and certified that questions of law existed which ought to be reviewed by the Court of Appeals (Fol. 417).

In their brief in this Court, petitioners argued (Appellants' Brief, pp. 71-91):

"Point VI—The Regulation, as Construed by the Prosecution, Deprives Appellants of Due Process and the Equal Protection of the Law in Violation of Their Rights Under the State and Federal Constitutions" (p. 71).

Point VII—The Police Commissioner's Regulation is a Direct and Undue Burden on Interstate Commerce" (p. 82).

[fol. 190] 18. The respondent, People of the State of New York, argued in the Court of Appeals (Respondent's Brief, pp. 20-29) that

"The Traffic Regulation as construed below is constitutional."

and argued under this point that Section 124 does not violate the due process or equal protection clauses of the Fourteenth Amendment to the Federal Constitution and does not constitute an undue burden on interstate commerce.

19. In these causes, therefore, there is drawn in question the validity of Section 124, Article IX of the Traffic Regulations of the City of New York as promulgated by the

Police Commissioner of said City, on the ground that said statute is repugnant to the Constitution and laws of the United States. And the decision of the Court of Appeals sustaining the validity of Section 124 against petitioners' attack was necessarily a rejection of petitioners' contention that said statute is repugnant to the Fourteenth Amendment and to Article I, Section 8 of the Constitution of the United States.

20. Therefore, in accordance with § 237 (a) of the Judicial Code (28 U. S. C. A. § 344) and in accordance with the Rules of the Supreme Court of the United States, your petitioners respectfully show this Court that these cases are ones in which, under the legislation in force when the Act of January 31, 1928 (45 Stat. 54) was passed, to wit, under § 237 (a) of the Judicial Code, a review could be had in the Supreme Court of the United States on a writ of error, as a matter of right.

[fol. 191] 21. The errors upon which your petitioners claim to be entitled to an appeal are more fully set out in the Assignment of Errors, filed herewith, pursuant to Rules 9 and 46 of the Rules of the Supreme Court of the United States, and there is likewise filed herewith a statement as to the jurisdiction of the Supreme Court of the United States, as provided by Rules 12 and 46 of the Rules of the Supreme Court of the United States.

22. No previous application for the relief prayed herein has been made to this Court or to any Judge thereof.

Wherefore, your petitioners pray for the allowance of an appeal from the Court of Appeals of the State of New York, the highest court of said State in which a decision in this cause can be had, to the Supreme Court of the United States, in order that the decision and final judgment of the Court of Appeals may be reviewed; that a transcript of the record, proceedings and papers in these causes, duly authenticated by the Clerk of the Court of Appeals under his hand and the seal of said Court, may be sent to the Supreme Court of the United States, as provided by law; that an order be made fixing the amount and kind of security to be required of the petitioners, and that the bond for costs

tendered by the petitioners be approved and that the said appeal operate as a supersedeas.

Dated: New York, N. Y., February 11, 1948.

Railway Express Agency, Inc. (one of the petitioners), by E. T. Williams, Executive Assistant, Davis Polk Wardwell Sunderland & Kiendl, Attorneys for Petitioner.

[fol. 192] *Duly sworn to by E. T. Williams. Jurat omitted in printing.*

[fol. 193] [Stamp:] A copy of the within paper has this day been received at the office of the corporation counsel, Feb. 17, 1948. John P. McGrath, Corporation Counsel.

[fol. 194] In Court of Appeals of New York

[Titles omitted]

Assignment of Errors

The defendants-appellants, in connection with and as part of their petition for the appeals herein, make the following assignment of errors upon which they will rely in the prosecution of their appeals to the Supreme Court of the United States from the judgment of the Court of Appeals of the State of New York entered November 20, 1947 (reargument denied January 15, 1948) affirming judgments of the Magistrates Court of the City of New York convicting petitioners of violating Section 124, Article IX of the Traffic Regulations promulgated by the Police Commissioner of the City of New York:

1. That the Court of Appeals erred in not finding that Section 124, Article IX of said Traffic Regulations as ap-
[fol. 195] plied to the petitioners in the circumstances of these cases, and as interpreted to forbid advertisements on the trucks of petitioner Railway Express Agency, Inc., in so far as said advertisements advertise things or events other than the business of said petitioner, is so unrelated to traffic control as to be repugnant to the Fourteenth Amendment of the Constitution of the United States, in depriving the

petitioners of liberty and property without due process of law, and in denying them the equal protection of the laws.

2. That the Court of Appeals erred in not finding that said Section 124, when applied and construed as aforesaid, is repugnant to Article I, Section 8 of the Constitution of the United States, as placing an undue burden upon interstate commerce.

Wherefore, on account of the errors hereinbefore assigned, petitioners pray that the said judgment of the Court of Appeals of the State of New York, dated the 20th day of November, 1947 in the above entitled causes, be reversed, and that these causes be remanded to said Court of Appeals for further proceedings not inconsistent with such reversal.

Dated, New York, N. Y., February 16, 1948.

Davis, Polk, Wardwell, Sunderland & Kiendl, Attorneys for Petitioners, Office & P. O. Address: 15 Broad Street, Borough of Manhattan, City of New York.

[fol. 196] [Stamp:] A copy of the within paper has this day been received at the office of the corporation counsel; Feb, 17, 1948. John P. McGrath, Corporation Counsel.

[fol. 197] In Court of Appeals of New York

[Titles omitted]

Order Allowing Appeal to the Supreme Court of the United States—February 16, 1948

The petition of Railway Express Agency, Inc., Charles Gerchario, Michael Long, Thomas McCabe, Milton Mu[illegible]aro, Jeremiah McCarthy, George Bauer, Herman Gipes, John Murray, Howard Broems, Frank Reilly, Charles Harrington, Edward Halloran and Emil Hugo Miller, the Appellants in the above entitled causes, for an appeal therein to [fol. 198] the Supreme Court of the United States from the judgment of the Court of Appeals of the State of New York affirming judgment convicting the Appellants of violating Section 124, Article IX of the Traffic Regulations, promulgated by the Police Commissioner of the City of New York, having been filed and presented herein, accompanied by

assignments of error and statement as to jurisdiction, all as provided by Rule 46 of the Rules of the Supreme Court of the United States, and the record in these causes having been considered, it is hereby

Ordered that appeals be and are hereby allowed to the Supreme Court of the United States from the final judgment dated the 20th day of November, 1947, of the Court of Appeals of the State of New York, as prayed in said petition, and that the Clerk of the Court of Special Sessions of the City of New York shall, within forty days from this date, make and transmit to the Supreme Court of the United States, under his hand and the seal of said Court, a true copy of the material parts of the record herein, which shall be designated by *praecipe* or stipulation of the parties or their counsel herein, all in accordance with Rule 10 of the Rules of the Supreme Court of the United States; and it is

Ordered Further that the said Appellants shall give a good and sufficient supersedeas bond, in the sum of $500.00/100 that said Appellants shall prosecute said appeals to effect and answer damages and costs if they fail to make their appeals good, and that said supersedeas [fol. 199] bond, when filed and approved, shall stay all proceedings in these causes until the final disposition of the same by the Supreme Court of the United States.

John T. Loughran, Chief Judge of the Court of Appeals of the State of New York.

Dated: Albany, N. Y., February 16th, 1948.

[fol. 200] [Stamp:] A copy of the within paper has this day been received at the office of the corporation counsel, Feb. 17, 1948. John P. McGrath, Corporation Counsel.

[fols. 201-203] Bond on appeal for $500.00 approved Feb. 18, 1948, omitted in printing.

[fols. 204-205] Citation in usual form showing service on Corporation Counsel, omitted in printing.

[fol. 206] SUPREME COURT OF THE UNITED STATES

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD

To: The Clerk of the Court of Special Sessions of the City of New York, Appellate Part, First Department:

You are hereby requested to make a transcript of record to be filed in the Supreme Court of the United States, pursuant to the appeals allowed in the above-entitled causes, and to include in such transcript the following papers and exhibits, including the record on appeal of the above consolidated causes on appeal to the Court of Appeals of the State of New York. Where the papers to be included in this transcript of record are in the record on appeal in the Court of Appeals, the papers are designated by appropriate folio numbers.

[fol. 207] 1. Summons, Railway Express Agency, Inc. (fols. 178-180).

2. Affidavit of Police Officer George W. Haner accompanying summons (fols. 181-189).

3. Answer of Railway Express Agency, Inc. (fols. 190-197).

4. Trial and testimony in the Magistrates Court of the City of New York, in Railway Express Agency, Inc. (fols. 199-327).

5. Decision of Magistrate in Railway Express Agency, Inc. (fols. 328-336).

6. Magistrate's Return on Appeal, in Railway Express Agency, Inc. (fols. 31-48).

7. Summons in Charles Gerchario, et al.

(1) Charles Gerchario (fols. 61-69)
(2) Michael Long (fols 70-78)
(3) Thomas McCabe (fols. 79-87)
(4) Milton Mulhare (fols. 88-96)
(5) Jeremiah McCarthy (fols. 97-105)
(6) George Bauer (fols. 106-114)
(7) Herman Gipes (fols. 115-123)
(8) John Murray (fols. 124-132)
(9) Howard Broems (fols. 133-141)
(10) Frank Reilly (fols. 142-150)
(11) Charles Harrington (fols. 151-159)

(12) Edward Halloran (fols. 163-168)
(13) Emil Hugo Miller (fols. 169-171).

8. Trial and testimony in Charles Gerchario, et al. (fols. 337-357).

9. Proceedings on Sentence, in Charles Gerchario, et al. (fols. 358-369).

10. Magistrate's Return on Appeal, in Charles Gerchario, et al. (fols. 49-60).

11. Notice of appeal by Railway Express Agency, Inc., to the Court of Special Sessions, Appellate Part, First Department (fols. 7-15).

[fol. 208] 12. Notice of Appeal by Charles Gerchario, et al., to the Court of Special Sessions, Appellate Part, First Department (fols. 19-30).

13. Opinion per Curiam, Court of Special Sessions, Appellate Part, First Department (fols. 397-414).

14. Order of Affirmance, Court of Special Sessions, Appellate Part, in Railway Express Agency, Inc. (fols. 385-390).

15. Order of Affirmance, Court of Special Sessions, Appellate Part, in Charles Gerchario, et al. (fols. 391-396).

16. Order of the Court of Appeals certifying questions of law and granting leave to appeal (fols. 415-419).

17. Notice of Appeal to the Court of Appeals, in Railway Express Agency, Inc. (fols. 373-378).

18. Notice of Appeal to the Court of Appeals, in Charles Gerchario, et al. (fols. 379-384).

The following additional papers are to be included in the transcript of record to be filed in the Supreme Court of the United States:

19. Decision of the Court of Appeals, dated November 20, 1947, affirming the judgments of conviction of Railway Express Agency, Inc., and Charles Gerchario, et al.

20. Order of the Court of Appeals, dated November 20, 1947, affirming the judgments of conviction of Railway Express Agency, Inc., and Charles Gerchario, et al.

21. Order of the Court of Appeals, dated January 16, 1948, denying motion of Railway Express Agency, and Charles Gerchario, et al., to reargue appeals in the Court of Appeals.

22. Order of the Court of Appeals, dated January 16, 1948, granting motion of Railway Express Agency, Inc., and

Charles Gerchario, et al., to amend remittitur from the Court of Appeals.

23. Amended remittitur from the Court of Appeals.

24. Petition to Appeal to the Supreme Court of the United States.

[fol. 209] 25. Order of Chief Judge John T. Loughran, granting appeal to the Supreme Court of the United States.

26. Statement of Jurisdiction.

27. Assignment of Errors.

28. Citation.

29. Admission of Service and Notice under Rule 12, paragraph 3, of the Rules of the Supreme Court of the United States.

30. The following Points of the briefs in the Court of Appeals of appellants Railway Express Agency, Inc., and Charles Gerchario, et al.:

(a) Point VI, pp. 71-82;

(b) Point VII, pp. 82-91.

31. The following Exhibits of appellant Railway Express Agency, Inc.:

(1) Exhibit A—Copy of Certificate of Incorporation of Railway Express Agency, Inc., dated December 6, 1928;

(2) Exhibit B—Minutes of meeting of Board of Directors of Railway Express Agency, Inc., dated October 27, 1942;

(3) Exhibit C—Minutes of meeting of Board of Directors of Railway Express Agency, Inc., dated January 26, 1943.

32. The following Exhibits of respondent People of the State of New York:

(a) Exhibit No. 3—Photograph of left side of truck of Railway Express Agency, Inc., bearing license number 290413, advertising the motion picture, "Without Love"; Spencer Tracy and Katherine Hepburn; M. G. M.

(b) Exhibit No. 4—Photograph of right side of same truck, advertising "Ringling Brothers and Barnum and Bailey Circus".

(c) Exhibit No. 5—Photograph of left side of truck of Railway Express Agency, Inc., bearing license number 290855, advertising, "I'd Walk a Mile for a Camel". [fols. 210-211] (d) Exhibit No. 6—Photograph of right side of same truck, advertising "Ringling Brothers and Barnum and Bailey Circus".

(e) Exhibit No. 7—Photograph of right side of truck of Railway Express Agency, Inc., bearing license number 291146, advertising "W.O.R. tune in 710. This is Mutual."

(f) Exhibit No. 8—Photograph of left side of same truck, advertising "Ringling Brothers and Barnum and Bailey Circus".

33. This praecipe with proof of service thereof.

Davis, Polk, Wardwell, Sunderland & Kiendl, Attorneys for Appellants, Office and Post Office Address, 15 Broad Street, New York, N. Y.

Service of the above praecipe accepted and acknowledged, this — day of —, 1948.

— —, Attorney for Respondent.

[Stamp:] A copy of the within paper has this day been received at the office of the Corporation Counsel, Mar. 9, 1948, John P. McGrath, Corporation Counsel.

[fols. 212-213] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 214] SUPREME COURT OF THE UNITED STATES

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed May 13, 1948

Pursuant to Rule 13, Paragraph 9, of the Revised Rules of the Supreme Court of the United States, Appellants in the above-entitled appeals state that they intend to rely upon all the points in their assignment of errors now on file in the Supreme Court of the United States.

Appellants deem the entire record, as filed in the Supreme Court of the United States in the above-entitled causes, necessary for consideration of the points relied upon.

[fol. 215] In addition, Appellants deem Points VI and VII of their Brief On Appeal in the Court of Appeals of the State of New York, which has been filed in the Supreme Court of the United States together with the record, to be necessary to the record to be printed in the Supreme Court of the United States, and therefore request that these Points beginning with page 71 of the said Brief, to and including page 91, be included in the said record on appeal in the Supreme Court of the United States.

Davis, Polk, Wardwell, Sunderland & Kiendl, Attorneys for Defendants-Appellants, Office and P. O. Address: 15 Broad Street, New York 5, N. Y.

Due service and receipt of a copy of the foregoing statement of points to be relied upon and designation of the parts of the record to be printed is hereby acknowledged this 11 day of May, 1948.

John P. McGrath, Corporation Counsel of the City of New York, Attorney for Respondent, Municipal Building, Borough of Manhattan, City of New York, N. Y.

[Stamp:] A copy of the within paper has this day been received at the office of the Corporation Counsel, May 11, 1948, John P. McGrath, Corporation Counsel

[fol. 216] [File endorsement omitted.]

[fols. 217-218] In Court of Appeals of New York

People of the State of New York, Respondent,

against

Railway Express Agency, Inc., Defendant-Appellant

People of the State of New York, Respondent,

against

Charles Gerchario and 12 others, Defendants-Appellants

Brief for Defendants-Appellants

[fol. 219] Point VI

The regulation, as construed by the prosecution, deprives appellants of due process and the equal protection of the law in violation of their rights under the State and Federal Constitutions.

The regulations, as interpreted below and applied to appellants, is not an appropriate exercise of the police power —the sovereign power to impose reasonable regulations upon personal conduct and the use of private property having a real and substantial relation to some aspect of the public welfare. It therefore deprives the appellants of their liberty and property without due process of law in violation of inalienable rights guaranteed to them by both the Federal and State Constitutions.

Moreover, as construed by the prosecution, the regulation arbitrarily places the appellants in a special class, and without any reasonable basis in fact discriminates against them, thereby unconstitutionally depriving them of the equal [fol. 220] protection of the laws.

It is settled that even though an enactment may be fair on its face, yet if it is applied and administered by public authority in a manner which is itself unreasonable or fails to accomplish the reasonable objects intended, or makes unjust discriminations between persons in similar circumstances, it is not within the police power. *Yick Wo v. Hopkins*, 118 U. S. 356.

As we have seen, although Section 124 purports to be a "regulation of traffic", in practical operation and effect it is a prohibition of a business not inherently vicious, and indeed recognized as legitimate—the business of mobile or vehicular advertising. By his edict, the Police Commis-

sioner would destroy that business in the City of New York and he would enforce the abolition by closing every street in the city to vehicles operated in the enterprise, with the added sanction of penal punishment for those engaged in their operation.

Assuming, without conceding, that some abuses having relation to traffic conditions have attended the conduct of the business of vehicular advertising in the City of New York, "mere abuse incident to an occupation ordinarily useful is not enough to justify its abolition, although regulation may be entirely proper". *Meyer* v. *Nebraska*, 262 U. S. 390, 403; *Adams* v. *Tanner*, 244 U. S. 590, 594; *Pierce* v. *Society of Sisters*, 268 U. S. 510. Absolute prohibition is unreasonable as a matter of law if regulation merely will suffice. *Ribnik* v. *McBride*, 277 U. S. 350; *Brazee* v. *Michi-*
[fol. 221] *gan*, 241 U. S. 340; *Weaver* v. *Palmer Bros.*, 270 U. S. 402; cf. *Powell* v. *Pennsylvania*, 127 U. S. 678.

Here, there has never been an attempt at regulation. Yet if, as the prosecution claims, the relief of traffic congestion is the aim of the regulation, there is nothing to show that this end may not be attained by permitting only a limited number of trucks to display advertising, or by regulating the size and type of advertising to be employed. Certainly, it should be made to appear that these or similar regulatory measures are inherently inadequate or have been unsuccessfully tried before a prohibition so sweepingly destructive as Section 124 may be said to meet the test of reason.

But even if that section be regarded as regulatory only and not prohibitive in scope, it is none the less invalid as applied to appellants. For it violates the principle that an exercise of the police power, to be valid, "must be reasonably calculated to achieve a legitimate public purpose". *Good Humor Corp.* v. *City of New York*, 290 N. Y. 312, 317; *Matter of Mid-State Advertising Corp.* v. *Bond*, 274 N. Y. 82. And if a regulation "purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects . . . it is the duty of the courts to so adjudge". *Mugler* v. *Kansas*, 123 U. S. 623, 661; *Hennington* v. *Georgia*, 163 U. S. 299, 303; *Liggett Company* v. *Baldridge*, 278 U. S. 105.

[fol. 222] Tested by these standards the regulation fails. As applied to the appellants, it has no real or substantial relation either to the reduction of congestion or the further

ance of safety in the city streets. There is nothing to show that the 1900 trucks operated by Railway Express in and out of the City of New York would be reduced, even by so much as one, if the present posters which they display were removed or that, without advertising, they would not traverse streets upon which they are now operated, or would move slower or faster in the delivery of their cargoes. It is undisputed here that the number of trucks and their routes are determined by the requirements of the *freight* and not the *advertisements* they carry.

Nor is there anything in the record to show that motorists or pedestrians are so distracted from due attention to traffic by the posters displayed on Railway Express trucks as to create a traffic hazard; that vehicular collisions or automobile accidents have resulted therefrom; or that vehicles stop in their tracks and people halt where they stand in petrified amazement at this poster display, so as to cause congestion of the movement of traffic.

To the contrary, there are facts of which the Court will take judicial notice, which prove that none of these situations is created. Many times this Court has reiterated the proverbial expression uttered long ago in *Ah Kow* v. *Nunan*, 5 Sawyer 552:

> [fol. 223] ". . . we cannot shut our eyes to matters of public notoriety and general cognizance. When we take our seats on the bench we are not struck with blindness, and forbidden to know as judges what we see as men; . . ."

The members of this Court have seen as men, many times and we dare say in many parts of the State, including New York City, Railway Express trucks bearing posters on their sides. As pedestrians they have walked the streets and as motorists they have driven or ridden in motor cars. We venture the statement that they have not themselves experienced, nor have they witnessed any observable congestion of traffic or public danger created by the advertising display.

It is, of course, true that the posters are designed to attract attention. But in this era of electric signs, of billboards, of car "ads", of magazine and newspaper "full page spreads", of sound amplifiers and sound vehicles, of sky-writing, plane-carried banners and electrified blimps, when every automobile has a radio and every radio pro-

gram has its "commercial", the mobile poster has become commonplace, and to a public surfeited with sales talk, particularly to the cosmopolitan populace of New York City, its power to attract or distract can no longer be said to be a public danger, even if it was in 1909.

In answer to all this, the prosecution simply refers to the *Fifth Avenue Coach Co.* case holding, in the year 1909, that the banning of vehicular "advertising for hire" was not an unreasonable exercise of police power. But a restric- [fol. 224] tion on private enterprise thought reasonable in 1909 may very well be unreasonable today. And this is particularly true of regulations in respect of motor vehicles and advertising, both of which were in their infancy 40 years ago.

Here again, "judicial notice may be taken of facts which are a part of the general knowledge of the country, and which are generally known and have been duly authenticated in a repository of facts open to all, and especially so of facts of official, scientific or historical character . . . And to ascertain such well known facts recourse is had to such documents and references as are worthy of confidence . . ." *Hunter* v. *N. Y. O. & W. R. R. Co.*, 116 N.Y. 615; *Brown* v. *Piper*, 91 U. S. 37.

As the court remarked in the *Fifth Avenue Coach Co.* case, the stages there involved "were drawn by horses prior to 1907" (p. 26). In 1909, when that case was decided, a motor car was as rare a sight on the streets of New York as a horsedrawn wagon is today. As the same court noted in 1908, "Automobiles have but recently come into common use. Within the last few years their use has not only greatly increased, but tours therewith have been extended through many municipalities. Good judgment has not always been exercised in their use, and the rights of others have sometimes been overlooked by their owners or drivers, and, principally in consequence thereof, more or less opposition has arisen to their unrestricted use upon the public streets [fol. 225] and highways. The opposition to such use has frequently found expression in local restrictive rules and ordinances". *City of Buffalo* v. *Lewis*, 192 N.Y. 193, 199.

The Encyclopaedia Britannica (14th Ed.) tells us that it was not until the period 1909-1912 that the production of motor cars became of any great importance. "The prejudice against a new and radical invention, poor road conditions, the comparatively high original cost, the cost of maintenance

and the general unreliability of the cars, all tended to retard rapid introduction of motor vehicles (*id.* vol. 15, p. 881). In 1909, the year of the decision in the *Fifth Avenue Coach* case, there were produced throughout the entire United States, only 127,731 motor vehicles (*id.* p. 881).

It has become part of local tradition that during those early days of automotive experimentation, the appearance of a "horseless carriage" upon the streets was itself an attractive nuisance—the signal for the gathering of street crowds and for the derisive cry of "Get a horse". The early motor car, steam-driven, slow-moving, subject to frequent breakdowns, smoky and noisy, was truly a satanic engine having devastating effect upon peace and safety in the streets. Particularly menacing was its effect on traffic generally, which was then almost universally horse-drawn. When, to such a machine as the automobile then was, advertisements were added consisting of "painted scenes and letters extravagant and gaudy in appearance" (194 N.Y. [Vol. 226] at 24), the prejudicial effect upon the public (including members of the judiciary) can well be imagined. A motor vehicle so bedecked was then in itself a "parade or show" and an intolerable nuisance in the streets.

At that time motor trucks were unknown. It was not until 1911 that their production began in the United States, and then only experimentally. In that year a total of only 10,681 motor trucks was thus produced. Commercial truck production did not have its first real impetus until after the close of World War I, when in 1918, 227,250 trucks were produced in this country (Encyc. Brit. vol. 15, p. 924). That was almost a decade after the *Fifth Avenue Coach Co.* decision.

It is also true that in 1909 automotive advertising, in its modern form and universality, was unknown and hardly dreamed of. The present day "business notices" appearing on the modern, streamlined truck have grown so familiar as to have become an accepted detail of the vehicle.

These revolutionary changes in the daily incidents of motor transportation have rendered obsolete, it seems to us, the decision in the *Fifth Avenue Coach Co.* case, at least in so far as it sustained as reasonable the prohibition of paid advertising on delivery vehicles operated in the regular course of their owners' business. This Court has not hesitated to depart from earlier precedents which, by reason of changed social and economic conditions, are no longer applicable. We respectfully suggest that a similar departure

[fol. 227] from precedent, if need be, is justified in this case. While "it is the function of the court of last resort to pass finally upon the cogency of conflicting arguments and the weight of conflicting considerations" as the late Chief Judge Lehman stated in his learned dissent in *People ex rel. Tipaldo v. Morehead*, 270 N. Y. 233, 241, in which the present Chief Judge concurred and which later became the law (*Chamberlin Inc. v. Andrews*, 271 N. Y. 1, affd. 299 U. S. 515):

> "That does not mean, of course, that a court of last resort may not reconsider the same question when it is again presented, and then reach a contrary conclusion. In the light of wider experience, broader information or changed conditions, the weight that should, reasonably, be given to conflicting considerations may change and error may become manifest. A constitution may be amended only in manner provided therein, but a court which under the Constitution is charged with the duty of construing the Constitution may change its construction when convinced of error. That courts have not been willing to perpetuate a construction after they have been convinced of its unsoundness, has been a source of strength to our system of constitutional government."

Not only is the regulation void as an unreasonable prohibition of a legitimate business and without real and substantial relation to the public welfare, but it is invalid because, as construed by the prosecution, it unfairly discriminates against the owners of vehicles advertising the [fol. 228] products of others and in favor of those owners who are permitted with impunity to utilize their vehicles for self-advertising purposes. As we have earlier pointed out, the theory of the People's case rests upon that very distinction; and these cases were tried upon the concession that if the vehicular advertisements involved had advertised Railway Express, the regulation would not have been contravened.

That distinction, we submit, is one without rational basis. It graphically demonstrates that there is no real relation between the regulation, as interpreted and enforced, and its avowed object of reducing traffic congestion and street hazards. For what is the difference in effect upon either

of those two conditions between a Railway Express truck displaying a poster proclaiming the merits of Camel cigarettes and a truck owned by National Biscuit Company urging the public, by pictorial colored representations painted on its sides, to eat the Uneeda Biscuits which that company makes? The Court will judicially notice that daily upon the streets of New York various manufacturers operate trucks which deliver and also advertise their products. Thus Borden's sometimes delivers its milk in white trucks shaped like a milk-bottle and bearing the legend "Borden's Golden Crest". National Dairy Products Co. delivers its ice cream in huge trucks advertising in gigantic and gaily colored lettering "Hydrox Ice Cream". A roving replica on wheels of one of the cottage-like Chock Full O' Nuts shops reminds the man in the street to drop in for a pound [fol. 229] of pistachios. A package of Life-Savers on wheels delivers that candy and at the same time advertises its merits.

Such instances could be multiplied but to no purpose. They and their like may be seen from every New York City street corner at almost any time. As the regulation has been interpreted, none of these are "advertising vehicles" within the prohibition of the regulation. Yet the only distinction between them and the trucks of Railway Express is that they advertise the products of their owners, while the vehicles of Railway Express advertise the products of others. Obviously, there is no difference in their effect upon traffic congestion or safety. And so it is plain that the regulation is actualy designed only to eliminate vehicular advertising for pay. As such it is unreasonably discriminatory and therefore void as denying the appellants the equal protection of the laws guaranteed to them by both the Fourteenth Amendment to the Federal Constitution and Article 1, Section 11 of the Constitution of the State of New York. *Hartford Co.* v. *Harrison*, 301 U. S. 459, 461, 462; *Mayflower Farms* v. *Ten Eyck*, 297 U. S. 266; *Nashville C. & St. L. Ry.* v. *Walters*, 294 U. S. 405, 429, 432; *Borden's Co.* v. *Baldwin*, 293 U. S. 194, 210; *Iowa-Des Moines Nat. Bank* v. *Bennett*, 284 U. S. 239; *Smith* v. *Cahoon*, 283 U. S. 553, 556, 557; *Louisville Gas & Electric Co.* v. *Coleman*, 277 U. S. 32, 37, 38; *Power Mfg. Co.* v. *Saunders*, 274 U. S. 490, 493; *Royster* [fol. 230] *Guano Co.* v. *Virginia*, 253 U. S. 412; *People* v. *Cohen*, 272 N. Y. 319; *People* v. *Orange County Road Cons. Co.*, 175 N. Y. 84, 89.

In point of fact it might well be held that the distinction between "business notices" and "advertising", urged by the prosecution and adopted by the Courts below, does not exist in the case of Railway Express, since the record shows that substantially all the products advertised by the posters on the sides of trucks are products carried by Railway Express (83, 84, 86, 87). In other words, by the paid advertising they carry, the trucks in question are developing the business of transportation which is their principal business. Nothing of the kind occurred in the case of the Fifth Avenue Coach Company.

Point VII

The Police Commissioner's Regulation is a direct and undue burden on interstate commerce.

The facts recited earlier in this brief (pp. 2-5, *supra*) establish, and it will not be disputed, that Railway Express and the trucks which it operates, including those involved in the instant prosecutions, are engaged in the delivery of goods in interstate commerce. *People* v. *Horton Motor Lines*, 281 N. Y. 196. Further, the advertisements are displayed on the sides of the trucks pursuant to a "nation-wide" advertising contract involving for its performance [fol. 231] the crossing of state lines—in itself a matter of interstate commerce. *Adams Express Co.* v. *New York*, 232 U. S. 14.

As we have seen, the Police Commissioner has not been content merely to regulate that advertising, or even to attempt regulation. His edict decrees that it be discontinued entirely. As a penalty for failure to submit to this sweeping prohibition, he has assumed to deny altogether to Railway Express and to its vehicles the right of passage upon the streets of the City of New York. Thus, he has confronted this interstate carrier with the alternative, at least in the City of New York, of either abandoning the interstate business of vehicular display advertising, or foregoing the interstate business of expressage of goods.

We contend that a so-called "local traffic regulation" having these far-reaching prohibitory consequences upon interstate commerce, is clearly violative of the commerce clause of the Federal Constitution (Article 1, cl. 3, § 8). For if this absolute prohibition may properly be called a "burden", merely, upon that commerce, then here the

burden is not only direct, but extreme in its destructive effect.

Even if there were a real and substantial relation between the regulation and public safety, the resultant impact upon interstate commerce invalidates it. But, as we have seen, wholly apart from considerations of interstate commerce, the regulation is not an appropriate exercise of local police [fol. 232] power (Point VI, *supra*). Therefore, the lack of justification for its direct prohibitory effect upon interstate commerce is complete.

While exertion of the police power essential for protection of the local community may extend incidentally to operations of interstate commerce, the police power does not justify the imposition of direct burdens on that commerce nor its subjection to unreasonable demands. *Smith* v. *Alabama*, 124 U. S. 465; *Hennington* v. *Georgia*, 163 U. S. 299; *N. Y., N. H. & H. R. R. Co.* v. *New York*, 165 U. S. 628; *Lake Shore & M. S. Ry. Co.* v. *Ohio*, 173 U. S. 285. As Mr. Justice Hughes stated in *Adams Express Co.* v. *New York*, 232 U. S. 14, 31:

> "Local police regulations cannot go so far as to deny the right to engage in interstate commerce, or to treat it as a local privilege and prohibit its exercise in the absence of a local license."

In that case, the court declared invalid an ordinance of the City of New York requiring a license for the operation within the City of wagons employed in interstate commerce. Attempt was made to sustain the measure as an appropriate safety precaution taken under the police power. The court did not hold that, in itself, the ordinance was arbitrary or manifestly absurd, but based the finding of unconstitutionality upon its prohibitive effect upon interstate commerce. We can perceive no substantial difference between the ex- [fol. 233] action by a municipal legislature of a license as a condition to operating in interstate commerce, and a policeman's edict that one may not engage in the interstate carriage of goods within city limits unless he also goes out of the interstate business of vehicular advertising.

This case, as we think, falls clearly within the decision in *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761, invalidating, as an undue burden on interstate commerce, an Arizona statute which made it unlawful to operate within that State

a passenger train of more than fourteen, or a freight train of more than seventy cars. The regulation, as the court found, had a serious adverse effect on transportation efficiency and economy, and at the same time it did not appear that the enactment would lessen the danger of accident.

The late Chief Justice Stone said in part for the majority of the Court (pp. 766-769):

> "Although the commerce clause conferred on the national government power to regulate commerce, its possession of the power does not exclude all state power of regulation. Ever since Willson v. Black-Bird Creek Marsh Co., 2 Pet. 245, and Cooley v. Board of Wardens, 12 How. 299, it has been recognized that, in the absence of conflicting legislation of Congress, there is a residuum of power in the state to make laws governing matters of local concern which nevertheless in some measure affect interstate commerce or even, to some extent, regulate it . . .
>
> But ever since Gibbons v. Ogden, 9 Wheat. 1, the states have not been deemed to have authority to im- [fol. 234] pede substantially the free flow of commerce from state to state, or to regulate those phases of the national commerce which, because of the need of national uniformity, demand that their regulation, if any, be prescribed by a single authority . . . .
>
> In the application of these principles some enactments may be found to be plainly within and others plainly without state power. But between these extremes lies the infinite variety of cases in which regulation of local matters may also operate as a regulation of commerce, in which reconciliation of the conflicting claims of state and national power is to be attained only by some appraisal and accommodation of the competing demands of the state and national interests involved . . . ."

Following the *Southern Pacific* case, the Supreme Court in *Morgan* v. *Commonwealth of Virginia*, 328 U. S. 373 held unconstitutional, as an undue burden on interstate commerce, a Virginia statute requiring all passenger motor carriers, both interstate and intra-state, to separate the white and colored passengers so that contiguous seats would

not be occupied by persons of different races at the same time. A violation of the statute was made a misdemeanor. Congress had not legislated with respect to the racial segregation of passengers on motor vehicles in interstate commerce, and the question was squarely presented as to how far a state may exercise its police power over a subject of interstate commerce in the absence of specific federal action. [fol. 235] After stating the general proposition that "where Congress has not acted, state legislation is . . . invalid which materially affects interstate commerce", the majority of the court stated (328 U.S. at 377):

> "The precise degree of a permissible restriction on state power cannot be fixed generally or indeed not even for one kind of state legislation, such as taxation or health or safety. There is a recognized abstract principle, however, that may be taken as a postulate for testing whether particular state legislation in the absence of power by Congress is beyond state power. This is that the state legislation is invalid if it unduly burdens that commerce in matters where uniformity is necessary—necessary in the constitutional sense of useful in accomplishing a permitted purpose. Where uniformity is essential for the functioning of commerce, a state may not interpose its local regulation."

Applying these principles to the Virginia statute, the majority opinion continued (p. 386):

> "As no state law can reach beyond its own border nor bar transportation of passengers across its boundaries diverse seating requirements for the races in interstate journeys result. As there is no federal act dealing with the separation of races in interstate transportation, we must decide the validity of this Virginia statute on the challenge that it interferes with commerce, as a matter of balance between the exercise of the local police power and the need for national uni- [fol. 236] formity in the regulations for interstate travel. It seems clear to us that seating arrangements for the different races in interstate motor travel require a single, uniform rule to promote and protect national travel."

Concurring in separate opinions, Justices Black and Frankfurter found the early decision in *Hall* v. *De Cuir*, 95 U. S. 485, controlling. Justice Black quoted that case as holding to the effect that "uniformity in the regulations by which . . . [a carrier] is to be governed from one end to the other of his route is a necessity in his business" and that it is the responsibility of Congress, not of the states, to determine "what such regulations shall be".

Under the authority of the *Southern Pacific* and *Morgan* decisions the instant case presents an enactment plainly outside the local police power. If this "traffic regulation" may legally be made by a municipal police commissioner, certainly statutes of like tenor may be constitutionally passed by every State legislature in the land. The net result would be the imposition of a state-created but nation-wide restraint upon the right to conduct interstate commerce—a condition which, unless complied with, would prohibit the right to carry goods interstate by railway express, and which, if complied with, would abolish altogether the right to advertise by interstate vehicular display. This is not therefore a case where determination of the validity of the local law involves a delicate balancing of [fol. 237] national against local interests. For the local regulation is such that, as against it, the national interest cannot survive.

But we need not go so far as to assume the adoption by all the states and all their municipalities of similarly prohibitive "traffic regulations". The supposition that only some of them might do so is enough to condemn such legislation. In that event, the movement of the appellant's trucks from state to state and from city to city would be seriously impeded, involving the removal of the advertisements upon entering a state or municipality having such legislation and their restoration upon entering one not so legislating. As the court said analogously in the *Southern Pacific* case (325 U.S. at 773-774):

> "Enforcement of the law in Arizona, which train lengths remain unregulated or are regulated by varying standards in other states must inevitably result in an impairment of uniformity of efficient railroad operation because the railroads are subjected to regulation which is not uniform in its application. Compliance with a state statute limiting train lengths requires

> interstate trains of a length lawful in other states to be broken up and reconstituted as they enter each state accordingly as it may impose varying limitations upon train lengths. The alternative is for the carrier to conform to the lowest train limit restriction of any of the states through which its trains pass, whose laws thus control the carriers' operations both within and without the regulating state . . . With such laws in force in states which are interspersed with those [fol. 238] having no limit on train lengths, the confusion and difficulty with which interstate operations would be burdened under the varied system of state regulation and the unsatisfied need for uniformity in such regulation, if any, are evident."

Consequently, it is evident that if vehicular display advertising by an interstate carrier is to be prohibitive or even regulated, the prohibition will have to be universal or the regulation will have to be uniform, and either result will have to flow from Congressional action.

In the *Southern Pacific* case, the Court found that the effects of the statute, outlined immediately above, were such as to interpose "a substantial obstruction to the national policy proclaimed by Congress, to promote adequate, economical and efficient railway transportation service. Interstate Commerce Act, preceding § 1, 54 Stat. 899" (325 U. S. at 773). A similar policy with respect to interstate motor vehicle transportation has been declared by Congress in the Motor Carriers Act (Title 49 USCA §§ 301-327 incl.). In that statute, "Congress sought to set out its purpose and the range of its action in a declaration of policy which covered the preservation and fostering of motor transportation in the public interest, tariffs, the coordination of motor carriage with other forms of transportation and cooperation with the several states in their efforts to systematize the industry"; and "efficient and economical movement in interstate commerce is obviously [fol. 239] a major objective of the Act". *U. S.* v. *Amer. Trucking Ass'ns*, 310 U. S. 534, 538; and see *Maurer* v. *Hamilton*, 309 U. S. 598, 606; Motor Carrier Act, Sec. 202, 49 USCA § 302.

As the police regulation here in question constitutes a "substantial obstruction" to the policy thus declared, it

may not be permitted to stand (*Southern Pacific Co.* v. *Arizona*).

Conclusion

The judgments of conviction should be reversed and the summons dismissed in the case of each of the appellants, with costs.

Respectfully submitted, Davis Polk Wardwell Sunderland & Kiendl, Attorneys for Defendants; Ralph M. Carson, C. C. Evans, William R. Meagher, Aloysius J. Castellano, of Counsel.

New York, October 14, 1947.

[fols. 240-241] Supreme Court of the United States

Order Noting Probable Jurisdiction—June 21, 1948

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on cover: File No. 53,016. New York Court of Appeals. Term No. 51. Railway Express Agency, Inc., Charles Gerchario, Michael Long, et al., Appellants; vs. People of the State of New York. Filed May 4, 1948. Term No. 51, O. T. 1948.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1947~~ 1948

No. 786 51

RAILWAY EXPRESS AGENCY, INC., CHARLES GERCHARIO, MICHAEL LONG, ET AL.,
Appellants,

vs.

THE PEOPLE OF THE STATE OF NEW YORK

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

STATEMENT AS TO JURISDICTION

JOHN P. McGRATH,
Counsel for Appellants.

DAVIS, POLK, WARDWELL,
SUNDERLAND & KIENDL,
Of Counsel.

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COURT OF APPEALS OF THE STATE OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK,
Plaintiff-Respondent,

against

RAILWAY EXPRESS AGENCY, INC.,
Defendant-Appellant

PEOPLE OF THE STATE OF NEW YORK,
Plaintiff-Respondent,

against

CHARLES GERCHARIO, MICHAEL LONG, AND 11 OTHERS,
Defendant-Appellants

STATEMENT AS TO THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES TO REVIEW ON DIRECT APPEAL THE JUDGMENT HEREIN OF THE COURT OF APPEALS OF THE STATE OF NEW YORK.

The defendants-appellants having presented this day their petition for appeal, pursuant to Rule 12 of the Rules of the Supreme Court of the United States now file their statement of the basis upon which it is contended that the Supreme Court of the United States has jurisdiction on a direct appeal to review the final judgment of the Court of Appeals herein, and should exercise such jurisdiction in these cases:

(A) The Statutory Provision Believed to Sustain the Jurisdiction

It is believed that the Supreme Court of the United States has jurisdiction to review on a direct appeal the final judgment in question by virtue of the express provisions of Section 237, subsection (a) of the Judicial Court (28 U. S. C. A. 344 (a)), which are in material part as follows:

> "A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had * * * where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon appeal. * * *"

(B) The State Statute, the Validity of Which Is Involved

The statute, the validity of which is involved, is Section 124, Article IX of the Traffic Regulations promulgated by the Police Commissioner of the City of New York, which provides:

> "§ 124. Advertising vehicles.
>
> No person shall operate, or cause to be operated, in or upon any street an advertising vehicle; provided that nothing herein contained shall prevent the putting of business notices upon such business delivery vehicles, so long as such vehicles are engaged in the usual business or regular work of the owner and not used merely or mainly for advertising."

The foregoing Traffic Regulation was made by the Police Commissioner under the authority alleged to have been conferred upon him by Section 435 of the New York City

Charter adopted by referendum and effective January 1, 1938, which provides in material part:

> "The police department and force shall have the power and it shall be their duty to * * * regulate, direct, control and restrict the movement of vehicular and pedestrian traffic for the facilitation of traffic and the convenience of the public as well as the proper protection of human life and health; * * * The commissioner shall make such rules and regulations for the conduct of pedestrian and vehicular traffic in the use of the public streets, squares and avenues as he may deem necessary which shall not become effective until filed with the city clerk and published in the City Record. The violation of such rules and regulations shall be triable by a city magistrate and punishable by not more than thirty days' imprisonment, or by a fine of not more than fifty dollars, or both."

Section 124 of the Traffic Regulations constitutes a State statute within the meaning of Section 237, Judicial Code (28 U. S. C. A. § 344).

New Orleans Water Works v. *Louisiana Sugar Ref. Co.*, 125 U. S. 18 (1888);

Atlantic Coastline R. Co. v. *Goldsboro*, 232 U. S. 548 (1914);

Reinman v. *Little Rock*, 237 U. S. 171 (1915);

Lake Erie & W. R. Co. v. *State Public Utilities Comm. ex rel. Cameron*, 249 U. S. 422 (1919);

Live Oak Water Users' Ass'n v. *Railroad Comm.*, 269 U. S. 354 (1926);

Sultan R. & Timber Co. v. *Dept. of Labor*, 277 U. S. 135 (1928);

Hamilton v. *University of California*, 293 U. S. 245 (1934);

Terminal Railroad Ass'n of St. Louis v. *Brotherhood of Railroad Trainmen*, 318 U. S. 1 (1943).

The Traffic Regulations herein referred to are not printed in an official edition, but are in pamphlet form, and for this reason a pamphlet containing the Regulations is annexed hereto as Appendix A.

(C) The Date of the Judgment Sought to Be Reviewed and the Date upon Which Application for Appeal Is Presented.

The final judgment of the Court of Appeals of the State of New York sought to be reviewed was made and entered November 20, 1947. Reargument was denied by that Court January 15, 1948. The petition for appeal to the Supreme Court of the United States was presented and filed February 16, 1948.

(D) The Nature of the Case and Rulings of the Court of Appeals Bringing the Appeal Within the Jurisdictional Provisions Relied On.

The Police Commissioner of the City of New York, purporting to act under authority of Section 435 of the Charter of the City of New York, promulgated certain Traffic Regulations effective January 1, 1938, among which is Section 124, Article IX of said Regulations, the provisions of which are above set forth.

The Defendant-Appellant Railway Express Agency, Inc. is a common carrier engaged in the expressage of goods in interstate commerce, operating some 14,500 delivery trucks throughout the United States, of which about 1,900 are run in the City of New York and registered and licensed by the State of New York (Fols. 262, 295). In the course of its business, and by explicit authority of its Charter, the said Appellant, since 1930, has leased space on the sides of its trucks for the display of posters advertising various products and events (Fols. 215-240). Some of these posters

advertise the business of the Appellant (Fols. 299-300); and other posters advertise things and events other than the Appellant's business (Fols. 350-51). These latter are displayed in performance of a nation-wide contract entered into in December, 1942 between Defendant-Appellant Railway Express Agency, Inc. and Douglas Leigh Poster Advertising Co. Testimony offered by Defendants-Appellants as to what revenue is derived from this contract was excluded (Fols. 298-99) It is undisputed that the trucks of Defendant-Appellant Railway Express Agency, Inc. are never operated solely to exhibit the posters—*e. g.*, driven empty about the City simply to display advertising. They use the streets only when they have merchandise to deliver, and only in connection with and as an incident to that function are the advertisements carried along with the freight (Fols. 300-1). There was no evidence that if the posters were removed, the number of trucks now operated would be reduced; or that any streets now used would not be traversed; or that the delivery routes now followed would be changed, limited or discontinued.

Although the theory of the Respondent is that the posters constitute an obstruction to traffic, there is no finding to that effect by the Police Commissioner nor testimony to that effect by the arresting officers; and there is nothing in the record to show that as a matter of experience street accidents attributable to the presence of the advertisements have occurred. Nevertheless the trucks of the Defendant-Appellant Railway Express Agency, Inc. have been classified as "advertising vehicles" within the prohibition of Section 124 of the Traffic Regulations, and the trucks of said Defendant-Appellant carrying advertisements have been excluded from every street within the City of New York under penalty of conviction for criminal offenses punishable by fine or imprisonment, or both.

As interpreted by the Police Commissioner and as applied to and enforced against the Defendants-Appellants, Section 124 of the Traffic Regulations, while it permits vehicular advertising if the vehicle advertises the business of its owner and is used in the regular course of that business, prohibits such vehicular advertising if the vehicle advertises events or things other than the business of its owner, even though the vehicle is at the time used in the regular course of the owner's business. So construed, Section 124 applies not alone to vehicles run wholly for the purpose of advertising display, but also to those used in the ordinary and usual course of the owner's delivery business; and under the interpretation which has been given to it by the Police Commissioner and the State courts, the Regulation absolutely prohibits within the City of New York the conduct of the otherwise legitimate business of paid vehicular advertising.

Also, under the interpretation which has been given to Section 124 of the Traffic Regulations in its enforcement against the Defendants-Appellants, a single truck of Railway Express Agency, Inc. may display on one side an advertisement of the business of the Defendant-Appellant and on the other side an advertisement of the business of another, *e. g.*, Camel Cigarettes; and while the Railway Express advertisement does not constitute an obstruction of traffic within the meaning of Section 124, the Camel Cigarette advertisement does constitute such an obstruction of traffic. Thus, simultaneously, a single truck is and is not a traffic obstruction.

Pursuant to this construction and application of Section 124, the Defendant-Appellant Railway Express Agency, Inc. was convicted of a violation thereof in the Magistrates Court of the City of New York on July 2, 1945 (Fols. 328-336). The other Defendants-Appellants, who were drivers of the truck involved, were similarly convicted on March

28, 1946 (Fols. 358-368). Successive appeals from said convictions were taken by the Defendants-Appellants to the Appellate Part of the Court of Special Sessions of the City of New York (Fols. 7-30), where said convictions were affirmed (Fols. 385-396), and thence, by permission (Fols. 415-418), to the Court of Appeals of the State of New York (Fols. 373-384), where the convictions were also affirmed, but by a closely divided bench.

From the outset, the Defendants-Appellants have defended the charge against them upon the ground that Section 124 of the Traffic Regulations is repugnant to the Constitution of the United States, particularly the Fourteenth Amendment and Article I, Section 8. These assertions of unconstitutionality were made as follows:

I. *Magistrates Court of the City of New York*

In its answer to the complaint served upon it (the other Defendants-Appellants were served with summonses only), Defendant-Appellant Railway Express Agency, Inc. pleaded, among others, the following defenses (Fols. 193-95):

> "*For a Second Defense:*
>
> 3. Alleges that, if construed to prohibit the carrying of paid advertising by the defendant on its delivery vehicles while operated in the streets of New York City in the transportation of merchandise in the usual conduct of the business of the defendant, § 124 of the Traffic Regulations is arbitrary, unreasonable and void, and exceeds the powers delegated by the State of New York to the City and to the Police Commissioner.
>
> *For a Third Defense:*
>
> 4. Alleges that, if construed as set forth in paragraph 3 hereof, § 124 of the Traffic Regulations would deprive the defendant of its property without due process of law in violation of the State and Federal Constitutions.

For a Fourth Defense:

5. Alleges that the defendant, a corporation of the State of Delaware doing business in the State of New York, employs delivery vehicles in the City of New York preponderantly in the carriage of goods in interstate commerce, and carries paid advertising in its vehicles as an incident to the carriage of goods, and that § 124 of the Traffic Regulations, if construed as set forth in paragraph 3 hereof would exceed the police powers of the State of New York and be an unconstitutional interference with interstate commerce."

In oral argument before Magistrate Morris Rothenberg, the following was stated by counsel for Defendant-Appellant Railway Express Agency, Inc. (Fols. 332-334):

"Mr. Carson: In connection with the Corporation Counsel's remarks, I might remind Your Honor that the Court of Appeals, in a case cited in our brief, has said that the Police Commissioner's power to make regulations having the force of law, is conditioned upon their being reasonable.

The construction which the Corporation Counsel urges Your Honor to put on this regulation, as we have shown, would be unreasonable.

But we primarily, without waiving our constitutional rights, urge upon Your Honor to apply the regulation as written, to allow the Railway Express Agency to carry business notices, not only its own, but those of others, in the prosecution of its business of carrying goods, because those notices relate to the goods it carries."

II. *Court of Special Sessions*

In their Notice of Appeal, Defendants-Appellants stated as grounds for appeal (Railway Express Agency, Inc., Fols. 11-13; Charles Gerchario, et al., Fols. 23-25):

"4. That under the construction put upon said § 124 by the Magistrate it violates the rights of the defendant

under the Fourteenth Amendment of the United States Constitution and Article I, Section 6 [meaning Section 8], of the Constitution of the State of New York.

5. That the business delivery vehicles of the defendant (including those described in the information) using the streets of the City of New York preponderantly carry goods in interstate commerce and that the construction of said § 124 by the Magistrate constitutes an undue burden upon interstate commerce and exceeds the police power of the City of New York.

6. That under the construction put upon said §124 by the Magistrate it deprives defendant of the equal protection of the laws in violation of the Fourteenth Amendment of the United States Constitution and Article I, Section 11 of the Constitution of the State of New York."

In the brief submitted by Defendants-Appellants to the Court of Special Sessions under date of November 4, 1946, they argued as Point II thereof (p. 21):

"The construction placed upon Section 124 by the magistrates in convicting defendants of a violation thereof is so forced, unreasonable and arbitrary as to render it unconstitutional and void."

The *per curiam* opinion of the Court of Special Sessions affirming the judgments of conviction, a copy of which is hereto annexed as Appendix B, concludes as follows (Fols. 413-414):

"It is our conclusion that the regulation bears a reasonable relationship to the subject of traffic control and public safety and that it reasonably comes within the charter grant of power to the Police Commissioner. In our opinion, the regulation is constitutional."

III. *Court of Appeals*

In the affidavit of Ralph M. Carson, of counsel to the Defendants-Appellants, sworn to January 24, 1947 and

§ 28. Wheel to curb on hill.

A driver shall not leave his motor vehicle unattended standing on any perceptible grade without effectively setting the brakes thereon, and turning the front or rear wheel to the curb.

§ 29. Mirrors, blocked vision and interference.

1. It shall be unlawful to drive a motor vehicle, except a motorcycle, which is not equipped with a mirror inside or outside of said vehicle through which the driver shall have a clear view of the road and traffic behind said vehicle.

2. No driver shall proceed if his motor vehicle be so loaded with material or persons that his vision through his mirror or side or front window is blocked or the driving mechanism is interfered with by materials or persons.

§ 30. Passengers in motor vehicle.

1. It shall be unlawful to drive a motor vehicle with more than three adult persons over the age of sixteen (16) years in the front seat of other than a commercial vehicle.

2. No person shall ride in any place or in any part of a vehicle except that provided for carrying purposes, nor shall he permit any part of his body to extend outside of any part of a vehicle, except when required to extend the hand to indicate an intention to turn, slow down, stop, or start from curb.

§ 31. Driving through safety zone.

No vehicle shall at any time be driven through or within a safety zone, except when a traffic sign permits it.

§ 32. Fire drill line.

The driver of a vehicle shall not drive through or approach within 100 feet of a line of children during a fire drill, nor interfere with, hinder, obstruct or impede in any way whatsoever any such fire drill, except authorized emergency vehicles.

§ 33. Overloaded or dangerously loaded vehicle.

1. It shall be unlawful to drive a vehicle so overloaded that the horse or motor can draw or propel it only with great difficulty.

2. No driver of a vehicle loaded with any material extending beyond its rear over four (4) feet shall operate or drive such vehicle unless there be attached a red flag by day and a red light at night at the extreme rear end of such material.

§ 34. Windshield and rear window obstructions.

The use or placing of posters or stickers on windshield or rear windows of motor vehicles other than those authorized by competent authority, is prohibited.

§ 35. Learner's street.

A driver with a learner's permit shall operate a motor vehicle only on streets designated as learner's streets by the Police Commissioner, and only when accompanied by a licensed chauffeur or operator who shall not permit such learner to violate this provision. (NOTE: Consult local police stations for information regarding location of learner's streets.)

§ 36. Limitations on backing.

The driver of a vehicle shall not back the same into an intersection or over a crosswalk and shall not in any event or at any place back a vehicle unless such movement can be made in safety.

§ 37. Emerging from alley or private driveway.

The driver of a vehicle emerging from an alley, driveway, or building shall stop such vehicle immediately prior to driving onto a sidewalk or into the sidewalk area extending across an alleyway, and upon entering the street shall yield the right of way to all vehicles approaching on said street.

§ 38. Vehicles not to be driven on sidewalk.

1. The driver of a vehicle shall not drive within any sidewalk area except at a permanent or temporary driveway.

2. A driver of a vehicle shall not proceed from one street to another by driving across a sidewalk or driveway for the purpose of avoiding the necessity of turning at an intersection.

§ 39. Flats; Safety measures.

Any person may, in order to remove or replace a flat tire on the left side of his vehicle, stop on the left side of a two way street with the left side of his vehicle facing and near the curb. A person shall not, unless circumstances prevent, remove or replace a flat tire while any part of his body is exposed to passing vehicles. No driver shall stop on a bridge for the purpose of removing or replacing a flat tire.

§ 40. Restrictions and permits required to take certain vehicles over bridges and viaducts.

submitted in the Court of Appeals in support of the motion of Defendants-Appellants for leave to appeal to the Court of Appeals, the following questions of law, among others, were said to be presented by the record and to be of such nature as to merit review by the Court of Appeals:

> "(c) Whether a construction of § 124 adverse to the appellants would not be unconstitutional as (i) making an unreasonable and arbitrary distinction between business notices and general advertising, (ii) depriving Railway Express of its property in the use of the sides of delivery vehicles for advertising incidental to the permitted transportation of goods, (iii) exceeding the powers delegated to the Police Commissioner under the New York City Charter (*Bus Depot Holding Corporation* v. *Valentine*, 288 N. Y. 115), (iv) making an unreasonable classification between business notices and advertising in the exercise of the administrative duty of traffic regulation, (v) denying the appellants equal protection of the laws by reason of the arbitrariness of said distinction, and (vi) exceeding the police power of the City of New York and unduly burdening interstate commerce (*People* v. *Horton Motor Lines*, 281 N. Y. 196.)"

Upon the basis of said affidavit, the Chief Judge of the Court of Appeals granted leave to appeal and certified that questions of law existed which ought to be reviewed by the Court of Appeals (Fol. 417).

In their brief in this Court, Defendants-Appellants argued (Appellants' Brief, pp. 71-91):

> "Point VI—The Regulation, as Construed by the Prosecution, Deprives Appellants of Due Process and the Equal Protection of the Law in Violation of Their Rights Under the State and Federal Constitutions (p. 71).
>
> Point VII—The Police Commissioner's Regulation is a Direct and Undue Burden on Interstate Commerce" (p. 82).

The Respondent, People of the State of New York, argued in the Court of Appeals (Respondent's Brief, pp. 20-29) that

> "The Traffic Regulation as construed below is constitutional,"

and argued under this point that Section 124 does not violate the due process or equal protection clauses of the Fourteenth Amendment to the Federal Constitution and does not constitute an undue burden on interstate commerce.

In dissenting from the affirmance by the Court of Appeals of the State of New York of the judgments convicting the Defendants-Appellants, three members of that Court of seven concurred in a memorandum opinion, stating:

> "This regulation of the Police Commissioner [Section 124, Article IX, Traffic Regulations of the City of New York], as interpreted to forbid these unobjectionable advertisements on defendant's trucks is so unrelated to traffic control as to be arbitrary as a matter of law."

The foregoing dissent constitutes the only opinion written in the Court of Appeals of the State of New York, the majority of that Court having affirmed the judgments appealed from without opinion.

On January 15, 1948, upon motion of the Defendants-Appellants, the Court of Appeals amended its remittitur to the Court of Special Sessions of the City of New York, so as to include therein the following statement of the questions arising under the Constitution of the United States which were presented and necessarily passed upon by that Court in its decision of these causes:

> "Questions under the Federal Constitution were presented and necessarily passed upon by this Court, viz: that Article 9, Section 124 of the Traffic Regulations of the Police Commissioner of the City of New York is repugnant to the Fourteenth Amendment and to

No person shall, without permission in writing from the commissioner of public works, operate or drive, on any bridge, or viaduct under the jurisdiction of the department of public works any steam or gasoline road rollers, steam or gasoline shovels, or any motor truck or trailer having a width of body inclusive of load of more than eight feet or having a height from pavement to top of vehicle or load of more than twelve feet six inches, or having a combined weight of truck and load, or of trailer and load, of more than thirty thousand pounds, the load to be so distributed that there shall not be more than eight hundred pounds per inch in width of tire on any one wheel, or having a length of body, inclusive of load, of more than thirty-five feet in the case of a single motor truck, or of more than fifty feet in the case of a combination of vehicles, or having wheels equipped with other than rubber tires, except on Nolins avenue and Hawtree Basin bridges in the borough of Queens, and Lemon Creek bridge in the Borough of Richmond. The total weight of truck and load permissible on Nolins avenue and Hawtree Basin bridges shall not exceed eight tons and on Lemon Creek bridge four tons.

§ 40-A. Bicycles on Bridges.

No person shall at any time walk, ride or propel a bicycle upon or across the vehicle traffic roadway of any bridge where signs prohibiting such practice have been installed.

§ 41. Clinging to moving vehicles.

No pedestrian or person riding upon any bicycle, motorcycle, coaster sled, roller skates, or any toy vehicle, shall attach the same or himself to any street car or moving vehicle upon the street. (NOTE: SUMMONS RETURNABLE TO DISTRICT MAGISTRATES COURT.)

§ 42. Dropping, throwing, or leaving destructive or injurious material in street.

No person shall wilfully or negligently drop, or permit to be dropped or thrown, upon any street any destructive or injurious material. (NOTE: SUMMONS RETURNABLE TO DISTRICT MAGISTRATES COURT.)

§ 43. Getting out of vehicle.

No person shall get out of any vehicle from the side facing on the travelled part of the street in such a manner as to interfere with the right of way of the driver of an approaching vehicle. (NOTE: SUMMONS RETURNABLE TO DISTRICT MAGISTRATES COURT.)

§ 44. Ice Wagons.

No person, being the owner or driver of any wagon used for the sale of ice, shall permit or allow the scale thereon or the beam to which it may be attached, or other implements for handling ice, to project, or be outside or beyond the side of such wagon when it is in motion in any street. (NOTE: SUMMONS RETURNABLE TO DISTRICT MAGISTRATES COURT.)

§ 45. Unbridled Horse.

A horse shall not be unbridled, nor left unattended in a street or unenclosed place without being securely fastened, unless harnessed to a vehicle with wheels so secured as to prevent it being dragged faster than a walk. (NOTE: SUMMONS RETURNABLE TO DISTRICT MAGISTRATES COURT.)

§ 46. Driver must have hand on steering device.

No person shall drive or ride a motor vehicle, motorcycle or bicycle without having his hand on the steering device or handle bars. A person driving, riding or leading a horse shall have the reins in his hand continuously.

§ 47. Obstructing rear red signal light.

When a vehicle is stopped upon a street, no person shall stand in such a position as to obscure the rear red signal light.

§ 48. Crossing fire hose.

No driver shall drive through or within established police or fire lines or over any unprotected hose of a fire department when laid down on any street, private driveway, or street car track, to be used at any fire or alarm of fire, without the consent of proper authority.

§ 49. Divided street.

The driver of a vehicle on a street divided by a parkway, walk, sunkenway, viaduct, circle, isle of safety, traffic stanchion, taxi stand, or divisional line or markers which divide a two-way street longitudinally, shall keep to the right of such division.

§ 50. Horn for danger only.

A driver shall sound the horn of his vehicle only when necessary to warn a person or animal of danger.

§ 51. Dazzling Lights.

No operator of any vehicle, or motorcycle, while operating same upon

any street, shall use any acetylene, electric or other headlight, unless it shall be so adjusted as not to blind or dazzle other users of the street or make it difficult or unsafe for them to ride, drive or walk thereon.

§ 52. Motor vehicles equipped for radio-telephone service.

No operator of a motor vehicle equipped for radio-telephone service shall receive or transmit messages over such radio-telephone while such vehicle is in motion. When an operator is receiving or transmitting a message, he shall stop the motor vehicle as near to the curb as possible, and in such a position as not to interfere with the orderly movement of traffic. (NOTE: This section shall not apply to the receiving or transmitting of messages by occupants of a motor vehicle other than the operator thereof.)

ARTICLE 4
Speed

§ 60. Speed limits and variations thereof.

The speed limit for driving any vehicle shall be as follows.

(a) 25 miles per hour, except where signs authorized by proper authority are posted indicating a GREATER OR LESSER speed.

(b) No driver shall drive at a rate of speed greater than 10 miles per hour when turning a corner.

(c) A driver who shall exceed any such speed limit shall be guilty of violating this section.

§ 61. Speed of authorized emergency vehicles.

The speed limitations set forth in this article shall not apply to authorized emergency vehicles responding to emergency calls. This provision shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the street, nor shall it protect the driver of any such vehicle from the consequence of a reckless disregard of the safety of others.

ARTICLE 5
Right of Way

§ 70. Right of way while travelling straight ahead.

1. THE CAR AHEAD. The driver of the vehicle ahead shall have the right of way.

2. RULE OF THE CAR AHEAD. The driver in front or being overtaken from right or left shall survey all traffic which might be affected by a change in pace or direction before slowing or turning and shall not stop nor turn in the ordinary course of travel in such a manner as to cause a collision.

3. RULE OF THE CAR BEHIND. The driver of a vehicle behind or passing another vehicle proceeding in the same direction shall always have his vehicle under such control that he can prevent a collision with the vehicle in front in the event of an emergency turn or stop caused by sudden danger or stop at an official signal.

4. EQUAL RIGHT OF WAY. Drivers travelling abreast and in parallel lines on the right side of the road shall have an equal right of way. Any such driver making a turn shall grant the right of way to the driver proceeding straight ahead.

5. THE DRIVER ON THE RIGHT SIDE OF THE STREET. A driver, all of whose vehicle is on the right side of the street, shall have the right of way over a driver, any part of whose vehicle is on the wrong side of the street.

§ 71. Non-controlled intersection.

The driver of a vehicle approaching an intersection not controlled by traffic lights, shall grant the right of way to the operator of the vehicle approaching from the right.

§ 72. General rules.

A driver:

(a) Shall keep or drive on the right side of a street when passing a vehicle coming from the opposite direction.

(b) Shall keep to the right, as near to the right curb as practicable, but shall move to the left, but not over the centre of a two-way street, upon approaching an intersection at which he desires to make a left turn.

(c) Shall drive to the right of any white line or other marking dividing the centre of a two-way street longitudinally, or between white lines if the street be marked in lanes.

(d) Shall not drive on the wrong side of a two-way street except as permitted in this section.

Article 1, Section 8 of the Constitution of the United States. This Court held that the Traffic Regulations aforesaid are not repugnant to said provisions of the Constitution of the United States."

The foregoing summary, as we believe, supports the assertion that the rulings of the courts below were of a nature to bring these causes within Section 237; subsection (a) of the Judicial Code (28 U. S. C. A. § 344), which is the statutory provision believed to confer jurisdiction on the Supreme Court of the United States to review on direct appeal the judgment of the Court of Appeals of the State of New York. The final judgment of the Court of Appeals necessarily involved questions as to the validity of an enactment having the force of a State statute, on the ground of its being repugnant to the Constitution of the United States, and the decision in the Court of Appeals was in favor of its validity.

The jurisdiction of the Supreme Court of the United States in the premises is also sustained by the authorities cited at page 3 above.

(E) Statement of the Grounds upon Which It Is Contended That the Questions Involved Are Substantial

Two questions are presented on this appeal:

First: Whether Section 124, Article IX of the Traffic Regulations of the Police Commissioner of the City of New York, in the circumstances presented by these cases and as interpreted and applied to forbid the advertisements on the trucks of Defendant-Appellant Railway Express Agency, Inc., is a valid and effective regulation of traffic, or whether that Section is so unrelated to traffic control as to be arbitrary and repugnant to the Fourteenth Amendment of the Constitution of the United States, as depriving the Defendants-Appellants of liberty and property without due process of law and denying them the equal protection of the laws.

Second: Whether Section 124, Article IX of the Traffic Regulations of the City of New York, as so construed and applied, is a valid and effective exercise of the local police power in the regulation of traffic, or whether it is repugnant to Article I, Section 8 of the Constitution of the United States, as imposing an undue burden and restriction upon interstate commerce.

The constitutionality of this enactment, as a traffic regulation, or of any similar purported regulation of traffic, has never been passed upon by the Supreme Court of the United States. The Respondent relied almost entirely in the lower courts upon *Fifth Avenue Coach Co. v. City of New York*, 194 N. Y. 19 (1909), aff'd 221 U. S. 467 (1911). A reading of that decision, however, will demonstrate that the ordinance there involved was not sustained as a safety or health measure, and certainly not as a traffic control law, but as a proper exercise by the City of New York, acting through the Municipal Legislature, of its right, as owner of the city streets, to limit or forbid street uses for private purposes not expressly or by necessary implication permitted by a franchise or corporate charter. Here there is no dispute that the Defendant-Appellant Railway Express Agency, Inc. is authorized by charter to display advertisements on its vehicles. Here the City is not exercising through the Municipal Legislature its undoubted right to limit or forbid certain private uses of the public streets; but rather, the Police Commissioner is purporting to exercise his power to regulate traffic. And here, the Traffic Regulation has been given an interpretation not accorded the ordinance in the *Fifth Avenue Coach* case, viz.: To permit others to advertise themselves while forbidding the Defendant-Appellant to advertise others. It should also be noted that in the *Fifth Avenue Coach* case the ordinance was not applied to an interstate carrier and therefore the second question presented on this appeal, to wit, whether Section 124 of the

(e) May drive on the wrong side of the street when the right side is impassable or closed by construction work, or to fix a flat tire as provided in section 39 of these regulations.

(f) May pass another vehicle proceeding in the same direction by driving on the wrong side of a two-way street, but must yield the right of way to any vehicle coming from the opposite direction. If the centre of the street be marked longitudinally by a white line or marker the driver may not cross it except in accordance with the provisions of Section 39 of these regulations.

(g) May drive on either side of a one-way street, but shall keep to the right as far as practicable.

(h) May pass to the right or left in overtaking a vehicle on a one-way street.

(i) May pass to the right or left in overtaking a vehicle proceeding in the same direction on a two-way street provided in passing the driver of the overtaken vehicle shall not be forced out of his right of way.

(j) Operating on a bridge, viaduct, highway, or in a tunnel where traffic lanes are established by means of marked lines, markers or lights, having entered a lane, shall not leave such lane until it ends, except:

(1) When directed by a police officer.

(2) When a lane is obstructed because of accident or breakdown of a vehicle or where there is an excavation or other roadway obstruction.

(3) Where broken lines are painted.

(k) Nothing herein shall require a driver proceeding on a street on which there is an elevated railroad to drive between the pillars and the curb. Said driver shall, however, grant the right of way to a trolley car or franchise bus when the condition of traffic permits.

§ 73. Right of way on a street partly blocked.

1. If a two-way street be partly blocked, leaving room for but one vehicle to pass, a driver shall not drive against the signal or flag of a police officer or signalman, and the driver proceeding according to signal shall be granted the right of way.

2. If there be no police officer or signalman, first, no driver shall have an absolute right of way; second, drivers meeting at such a point shall be under an obligation to come to a full stop if necessary to avoid a collision and shall proceed by arrangement between them, the driver upon whose side the street is closed yielding preference in proceeding to the driver on whose side the street is open.

3. If there be street construction or impassable objects, except vehicles halted in the due course of travel, on one side of a two-way street, leaving room for two vehicles to pass on the open side between said obstructions and the curb, the centre of the street shall be between said obstructions and the opposite curb.

§ 74. Right of way over driver making turn.

A driver proceeding straight ahead with the green signal shall have the right of way over any driver making a turn.

§ 75. Stop at "Stop" sign.

A driver coming to a full stop at a "stop" sign shall yield the right of way to any driver proceeding on the intersecting street.

§ 76. One-way street.

A driver shall operate a vehicle on a one-way street only in the direction indicated by arrows, except that vehicles of the Fire Department, while responding to an alarm, false or otherwise, may be operated in any direction on a one-way street.

§ 77. Right of way of pedestrians.

1. Pedestrians crossing at an intersection on a crosswalk on a green light shall have a clear and substantial right of way.

2. Pedestrians crossing at an intersection on a crosswalk unprotected by traffic lights or police officer shall have a clear and substantial right of way over any driver.

3. A driver shall not interfere with the right of way of a pedestrian.

Nothing contained herein shall modify the duty of a driver to use due care at all times when a pedestrian shall be in his pathway.

§ 78. Vehicles having right of way.

The following vehicles have preference: — Vehicles of the fire department and of the fire patrol, when going to, or on duty at, or returning from a fire or an alarm, false or otherwise; all ambulances, whether of public or private character when engaged in carrying sick or injured persons to hospitals or other places of relief or treatment or when re-

sponding to a call to attend sick or injured persons; all vehicles when employed in carrying sick or injured persons to hospitals or other places for relief or treatment, when accompanied by a police officer; vehicles of the police department; prison vans; U. S. Mail vehicles carrying the United States mail; and only in cases of emergency, vehicles of the several bureaus of housing and buildings, vehicles of the department of water supply, gas and electricity and of public utility corporations.

§ 79. Right of way of trolley cars.

Subject to the provisions of Sections 78 and 80, surface cars running on tracks laid in the street especially for their use shall have the right of way along such tracks between cross streets over all vehicles moving in the same direction at a lesser rate of speed. The driver of any vehicle proceeding upon the track in front of a surface car at a speed less than the speed of the surface car shall turn out as soon as possible upon signal by the motorman.

§ 80. Duty of drivers on approach of emergency vehicles.

Upon the immediate approach of an authorized emergency vehicle, when the driver is giving audible signal by siren, exhaust whistle, or bell, the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the nearest edge or curb of a street, clear of any intersection and keep it in such a position until the authorized emergency vehicle, or vehicles, has passed, except when otherwise directed by a police officer.

Upon the approach of an authorized emergency vehicle or vehicles as above stated, the motorman of every street car shall immediately stop such car clear of any intersection and keep it in such a position until the authorized emergency vehicle or vehicles has passed, except when otherwise directed by a police officer.

This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the street.

§ 81. Following emergency vehicles prohibited.

The driver of any vehicle other than one on official public business shall not follow any emergency vehicle travelling in response to an emergency call closer than two hundred (200) feet, nor drive into nor park such vehicle within the block where such emergency work is in progress.

ARTICLE 6
Signs and Signals

§ 90. Whistle signals.

The following whistle signals by police officers are prescribed:

One Blast: Moving traffic shall stop.

Two Blasts: Cross traffic shall move.

Three or More Blasts: (Emergency) All moving traffic shall immediately stop.

§ 91. Obedience to Police.

A driver must at all times comply with any direction given by a police officer by hand, voice, whistle or mechanical device, and a police officer in order to expedite the movement of traffic or to safeguard pedestrians or property may disregard any traffic light signal or regulation.

§ 92. Traffic control signal legend.

Whenever traffic is controlled by traffic signals exhibiting the word "Go," or "Stop," or exhibiting different colored lights one at a time, the following colors and said terms shall mean:

1. Green alone or "Go." The driver facing the signal may proceed as permitted herein.

2. Red alone or "Stop." The driver facing the signal shall stop as provided herein.

3. Red with green arrow:

   (a) "Right turn — Green arrow": Traffic facing the signal may turn right under conditions specified for "green" or "go."

   (b) "Vertical Green Arrow": Traffic facing the signal may proceed straight ahead under conditions specified for "green" or "go."

   (c) "Left turn — Green arrow": Traffic facing the signal may turn left under conditions specified for "green" or "go."

4. All red or dark period. The driver stopped on or facing a red signal light shall not start during the all red or dark period of such light.

Traffic Regulations constitutes an undue burden upon interstate commerce, was not presented in that case. Finally, the ordinance in the *Fifth Avenue Coach* case was applied to prohibit vehicular advertising only on Fifth Avenue in the City of New York, whereas in the cases at bar the Police Commissioner has proscribed all paid vehicular advertising, not alone on Fifth Avenue but everywhere throughout the City of New York.

Nevertheless and despite these clear factual and legal distinctions between the *Fifth Avenue Coach* case and the instant causes, the Respondent has thus far successfully relied upon that decision to sustain the validity of the statute here involved.

It is of significance, however, that even the majority of the Court of Appeals of the State of New York did not expressly rely upon the *Fifth Avenue Coach* case in affirming the convictions of the Defendants-Appellants.

That the questions here presented are substantial and closely debatable is indicated by the very sharp cleavage of opinion in the Court of Appeals.

Those questions are of vital importance not only to the Defendants-Appellants, who are personally interested in the outcome of these appeals, but also to all those engaged in the business of vehicular advertising in the City of New York and to all carriers in interstate commerce who display paid advertising upon their vehicles, and who have occasion, by the necessity of their business, to enter the territorial limits of the City of New York.

That the foregoing questions presented on this appeal are substantial is further evidenced by the basic underlying propositions and supporting authorities stated and cited immediately below.

5. Red blinker. The driver facing the signal shall come to full stop and go when safe.

6. Yellow or white blinker. Driver shall proceed with caution.

§ 93. 1. Rule of stops and turns on simultaneous traffic control signal system:

(a) A driver shall stop back of the pedestrian crosswalk on the near side of any intersection he is approaching when the light ahead of him shall turn red.

(b) A driver turning into or from or crossing a street controlled by such a system at intersections at which there is no light shall obey the rule of turns and crossings as if a light were placed at the intersection where he is turning or crossing.

2. Rule of stops on a progressive traffic control signal system or isolated traffic control signal.

On a street controlled by a progressive light control system or where there is an isolated light, a driver shall not be obliged to stop at intersections between him and a signal of red, but he shall stop at the near side crosswalk of the intersection at which said signal shall be set at red.

3. Lights between intersections.

Where a traffic control signal is installed at a point between intersections, the driver of a vehicle shall stop on the red signal at that point.

§ 94. Obedience to official traffic control devices.

The driver of any vehicle and the motorman of any street car shall obey the instructions of any official traffic control device unless otherwise directed by a police officer, subject to the exception granted the driver of an authorized emergency vehicle.

§ 95. Interference with traffic control devices.

No person shall move, remove, deface, damage, or obstruct the view of or otherwise interfere with any traffic control device placed or erected by proper authority.

§ 96. No sign or printing to be permitted without authority.

No sign, painting or printing purporting to give directions, speed limits or other provisions of the Traffic Regulations, or manner of driving, shall be permitted on the streets or sidewalks or buildings without proper authority.

§ 97. Signal by drivers.

1. Signal by driver of vehicle not equipped with a mechanical or electrical signal device. A driver of such a vehicle before starting from the curb or turning to the right or left or slowing down or stopping, except in stopping on a red light or in an emergency, shall give timely warning by holding his arm out horizontally and at right angles to the vehicle. This section shall not apply to street cars or to drivers or motormen of street cars.

2. Signal by driver of vehicle equipped with a mechanical or electrical device. A driver of such a vehicle, before starting from the curb or turning to the right or left or slowing down, shall give timely warning by said signaling device.

3. Drivers shall signal by hand or above described devices to a police officer to inform him of the direction of a turn.

ARTICLE 7

Equipment—Lights

§ 100. Warning devices.

1. Every motor vehicle and motorcycle operated on the streets of this city shall be equipped with a suitable and adequate horn for warning.

2. It shall be unlawful to drive a vehicle to which is attached a gong, bell or siren whistle, or to sound such device in any street. A horn, bell or other device, except a siren, may be attached to a bicycle, and a bell or gong may be used on a street car. This subdivision shall not apply to authorized emergency vehicles.

§ 101. Brakes and steering tests.

1. Every motor vehicle shall be provided with adequate brakes and steering mechanism in good working order and sufficient to control such vehicle when in use.

2. Every motor vehicle shall have brakes which are capable of bringing it to a full stop when operated at 20 miles an hour on dry pavement on level ground within the following distances from the point where such brakes are first applied:

2 wheel brakes	45 feet
4 wheel brakes	30 feet
Hand brakes	75 feet

(F) Propositions and Authorities

I

Section 124 of the Traffic Regulations, although it may be fair on its face, has been applied and administered by the Police Commissioner in a manner which is itself unreasonable, which fails to accomplish the reasonable objects intended, and which makes unjust discriminations between Defendants-Appellants and others in similar circumstances. It is therefore not within the local police power. *Yick Wo* v. *Hopkins*, 118 U. S. 356 (1886).

II

Section 124 of the Traffic Regulations in effect prohibits absolutely the otherwise legitimate business of vehicular advertising in the City of New York, without previous effort by public authority to regulate that business, and without a showing that any abuse inheres in the business itself or that such abuses, if any, are general and difficult to control by regulation, or that they cause or threaten injury to the public so serious as to outweigh the harm that would be caused by complete prohibition. Therefore, the Traffic Regulation is invalid within the settled principle that absolute prohibition is unreasonable as a matter of law when regulation merely will suffice.

Brazee v. *Michigan*, 241 U. S. 340 (1916);
Adams v. *Tanner*, 244 U. S. 590, 594 (1917);
Meyer v. *Nebraska*, 262 U. S. 390, 403 (1923);
Pierce v. *Society of Sisters*, 268 U. S. 510 (1925);
Weaver v. *Palmer Bros.*, 270 U. S. 402 (1926);
Ribnik v. *McBride*, 277 U. S. 350 (1928).

III

Section 124 of the Traffic Regulations, even if regarded as regulatory and not prohibitory, is invalid because it is not

reasonably calculated to achieve a legitimate public purpose, and although purporting to have been enacted to protect the public safety, it has no real or substantial relation to that object.

Mugler v. *Kansas*, 123 U. S. 623, 661 (1887);
Hennington v. *Georgia*, 163 U. S. 299, 303 (1896);
Liggett Co. v. *Baldridge*, 278 U. S. 105 (1928).

IV

Section 124 of the Traffic Regulations, as construed to prohibit only the display of posters advertising the products of other than the owner of the vehicle involved, is unreasonably discriminatory and void as denying the Defendants-Appellants the equal protection of the laws.

Royster Guano Co. v. *Virginia*, 253 U. S. 412 (1920);
Power Mfg. Co. v. *Saunders*, 274 U. S. 490; 493 (1927);
Louisville Gas & Elec. Co. v. *Coleman*, 277 U. S. 32, 37-38 (1928);
Smith v. *Cahoon*, 283 U. S. 553, 556, 567 (1931);
Iowa-Des Moines Nat. Bank v. *Bennett*, 284 U. S. 239 (1931);
Borden's Co. v. *Baldwin*, 293 U. S. 194, 210 (1934);
Nashville C. & St. L. Ry. v. *Walters*, 294 U. S. 405, 429, 432 (1935);
Mayflower Farms v. *Ten Eyck*, 297 U. S. 266 (1936);
Hartford Co. v. *Harrison*, 301 U. S. 459, 461, 462 (1937).

V

Section 124 of the Traffic Regulations, as interpreted and applied to prohibit the display of paid vehicular advertising carried on trucks engaged in interstate commerce and in performance of a nation-wide contract for such advertising display, constitutes an undue burden on interstate commerce.

Smith v. *Alabama*, 124 U. S. 465 (1888);
Hennington v. *Georgia*, 163 U. S. 299 (1896);
N. Y., N. H. & H. R. Co. v. *N. Y.*, 165 U. S. 628 (1897);
Lake Shore & M. S. Ry. Co. v. *Ohio*, 173 U. S. 285 (1899);
Adams Express Co. v. *N. Y.*, 232 N. Y. 14, 31 (1914);
Maurer v. *Hamilton*, 309 U. S. 598, 606 (1940);
U. S. v. *Amer. Trucking Ass'ns*, 310 U. S. 534, 538 (1940);
Southern Pacific Co. v. *Arizona*, 325 U. S. 761 (1945);
Morgan v. *Commonwealth of Virginia*, 328 U. S. 373 (1946).

Dated: New York, N. Y., February 11, 1948.

Respectfully submitted,

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§ 113. Rule of turn on lights.

The color of the light referred to shall be the color facing the driver when he is driving straight ahead before turning.

1. A right turn shall be made on a green light.

2. A left turn shall be made on a green light.

3. A driver, intending to make a left turn, who has passed beyond the near side crosswalk and is waiting on the intersecting street when the light ahead turns red, shall complete a left turn when the light on the intersecting street turns green.

4. A driver shall not turn on the red light except:

(a) When a police officer shall permit him to do so.

(b) When a sign permits him to do so.

(c) When a green arrow permits him to do so.

ARTICLE 9
Obstructions

§ 120. Obstruction of traffic.

1. General provision. No person shall stop a vehicle on any crosswalk or intersection of streets.

2. No person shall place any vehicle crosswise of any street, except to load thereon or unload therefrom, but in no case shall any person permit such vehicle to remain crosswise of any street for a longer period than may be actually necessary for such purposes.

3. Streets used by surface cars. The owner or occupant of any store, warehouse or building in any street, in which the rails of any railroad company are laid so close to the curb as to prevent the owners or occupants from keeping any vehicle in the carriageway in front of his place of business, without interference with the passing of cars of any such company, may, while loading or unloading, occupy so much of the sidewalk as may be necessary for a vehicle; provided that sufficient space be allowed for the passing of pedestrians between the vehicle and the stoop or front of every such store, warehouse or other building.

§ 121. Vehicle shall not obstruct traffic.

The driver of a vehicle shall not permit it to so occupy any street as to obstruct traffic or stand other than as close to the curb or edge of the roadway as possible for any purpose.

§ 122. Retarding traffic.

No person shall drive a vehicle at such a slow speed as to impede or retard the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

§ 123. Intersection or crosswalk obstructions.

A vehicle about to enter an intersection for the purpose of proceeding through the intersection, or to make a right or left turn, shall not enter such intersection when the roadway immediately beyond the confines of the intersection is obstructed by traffic.

§ 124. Advertising vehicles.

No person shall operate, or cause to be operated, in or upon any street an advertising vehicle; provided that nothing herein contained shall prevent the putting of business notices upon business delivery vehicles, so long as such vehicles are engaged in the usual business or regular work of the owner and not used merely or mainly for advertising.

§ 125. Backing to curb.

Subject to the provisions of Article 15 of these regulations, a vehicle shall not back to the curb, except under the following conditions:

(a) On a two-way street a sufficient space shall be left clear for the passage of a vehicle between the backed up vehicle and the center of the street.

(b) On a one-way street a sufficient space shall be left clear for the passage of a vehicle between the backed up vehicle and the opposite curb, or a vehicle parked or engaged in loading or unloading thereat.

ARTICLE 10
Solicitation

§ 130. Talking or selling or soliciting rides.

1. No person shall stand in the travelled part of any street to talk with or sell or offer to sell anything to an occupant of any vehicle.

2. No person shall solicit a ride from the occupant of a vehicle by word or gesture.

(Here follows 1 furnished book, folio 20)

APPENDIX "A"

19

POLICE DEPARTMENT
CITY OF NEW YORK

TRAFFIC REGULATIONS

TRAFFIC REGULATIONS ADOPTED BY THE POLICE COMMISSIONER UNDER AUTHORITY OF SECTION 435, NEW YORK CITY CHARTER

ABSTRACTS FROM VEHICLE AND TRAFFIC LAW, STATE OF NEW YORK

ABSTRACTS FROM ADMINISTRATIVE CODE, CITY OF NEW YORK

and

ABSTRACTS OF TRAFFIC REGULATIONS IN PARKS AND PARK STREETS ADOPTED BY THE PARK COMMISSIONER

Published for the Information of Drivers and Pedestrians

January 1, 1948

ARTHUR W. WALLANDER
POLICE COMMISSIONER

Copies may be obtained at Police Stations

U. F. 47

3. No person shall talk to or solicit a driver or other occupant of a passenger vehicle for the purpose of watching, guarding, washing, polishing or cleaning such vehicle parked or about to be parked on any street, or for the purpose of directing it to a place for parking on any street or assisting in such parking.

4. No person shall approach a passenger vehicle on any street while the same has stopped temporarily or is about so to stop, and wipe or clean the same, or any part thereof, or offer to do so, or render or offer any other service in relation to such vehicle, or solicit a gratuity, except services rendered in connection with emergency repairs at the request of the driver of the vehicle.

5. No person, other than an occupant or prospective occupant of a passenger vehicle on a street, shall open, hold open or close, or offer to open, hold open or close, any door thereof; but this provision shall not apply to such acts when intended purely as social amenity, without expectation or acceptance of a gratuity, nor to doormen or other persons employed by owners, occupants or managers of abutting premises, to render such service, nor when such service is incidental to other legitimate service being rendered to such an occupant or prospective occupant of a passenger vehicle.

6. Unless asked to do so without advance solicitation (direct or implied), no person shall hail or procure for another, not in his or her social company, a taxicab or other passenger vehicle. (NOTE: VIOLATION OF THIS SECTION IS RETURNABLE TO DISTRICT MAGISTRATES COURT.)

ARTICLE 11.
Omnibuses and Street Cars

§ 140. Stops, for omnibuses and street surface railway cars.

1. All omnibuses and street surface railway cars shall come to a full stop before crossing any steam or electric railroad grade crossing.

2. Street surface railway cars when signalled to take on or discharge passengers shall come to a full stop in such a position as not to obstruct the crosswalk before crossing any intersecting or connecting street; except that, with the written approval of the Police Commissioner and upon the installation of "Trolley Stop" signs by the railway company, street surface railway cars may stop:

(a) At other points on unpaved streets.

(b) In the centers of blocks over four hundred feet long.

(c) On the far side of any street containing an intersecting street railway.

§ 141. Omnibuses; routes, stops, safety, etc.

1. No person shall operate or move or cause to be operated or moved on any street an omnibus operating pursuant to a franchise or consent of the Board of Estimate of the City of New York which designates the route to be followed, except on the route so designated; no person shall operate or move or cause to be operated or moved on any street any other omnibus, other than a charter omnibus, except over a route designated by the Police Commissioner in writing.

2. No driver of an omnibus shall pick up or discharge passengers on any street except at bus stops designated by the Police Commissioner in writing. A charter omnibus may stop on the highway at points of origin and destination for the purpose of expeditiously receiving or discharging passengers. No person shall back any omnibus from or into any street or across or along any sidewalk.

3. No person shall operate or move or cause to be operated or moved on any street an omnibus for the operation of which a franchise, consent, certificate of convenience and necessity, order or other authorization of any municipal, state or federal authority is required, unless such franchise, consent, certificate of convenience and necessity, order or other authorization shall have been obtained. No person shall operate or move or cause to be operated or moved on any street an omnibus operating pursuant to a certificate of convenience and necessity, order or other written authorization of any state or federal authority, for which operation a franchise or consent of the Board of Estimate of the City of New York is not required, unless there shall be filed with the Police Commissioner, not later than two weeks after issuance, duly authenticated copies of all such certificates, orders, authorizations and amendments thereto.

4. Every person applying to any governmental authority other than the City of New York for authorization to operate an omnibus into or through the City of New York, for which operation a franchise or consent of the Board of Estimate of the City of New York is not required, shall, within 10 days after the date of submitting such application to

such governmental authority, file a duly authenticated copy thereof with the Police Commissioner and attach thereto a statement setting forth the address, by street and number, of the proposed off-street terminal or terminals to be used within the City of New York.

§ 142. Omnibuses; terminals, stickers, etc.

1. No person shall operate or move or cause to be operated or moved on any street any intrastate or interstate omnibus unless such intrastate or interstate omnibus operates from an off-street terminal or terminals duly approved by the proper authorities of the City of New York.

2. No person shall operate or move or cause to be operated or moved on any street an intrastate or interstate omnibus unless the driver of such omnibus shall have in his possession throughout each trip a route slip setting forth the points of origin and destination by street and number and the route to be followed in the City of New York throughout each such trip, by streets.

3. No person shall operate or move or cause to be operated or moved on any street any omnibus required by law, ordinance, resolution or regulation of any municipal, state or federal authority to display a certificate, disc, sticker, poster or other insignia evidencing that such omnibus has been inspected and is mechanically fit, or has been bonded or insured, or that prescribed fees have been paid, unless such a certificate, disc, sticker, poster or other insignia, currently valid, shall be displayed in the lower right hand corner of the interior surface of the windshield of such omnibus. In the event it is required that any writing be placed on any such certificate, disc, sticker, poster or other insignia by someone other than a public official, no person shall operate or move or cause to be operated or moved on any street any such omnibus unless such writing shall have been placed on such certificate, disc, sticker, poster or other insignia, in black ink and in letters or numbers no less than one inch in height and three-fourths of an inch in width.

4. No person shall operate or move or cause to be operated or moved an omnibus leased, rented or borrowed from another person unless there is marked on the side of the omnibus in letters at least three inches in height, the words "Chartered by" followed by the name of the person operating such leased, rented or borrowed omnibus.

5. No omnibus shall park at any time on any street within the City of New York.

ARTICLE 12
Taxicabs

§ 150.

1. No driver of a taxicab, while awaiting employment, shall stand in any street, except:

(a) On a taxicab stand designated pursuant to law.

(b) In front of fire hydrants, except those located on a street where parking restrictions are in effect.

2. A driver must be seated in and have taxicab ready for immediate operation at all times while such taxicab is standing in front of a fire hydrant. If necessary to leave such taxicab, driver must first remove it from in front of fire hydrant.

3. Taxicab driver must immediately remove his taxicab from in front of a fire hydrant when instructed so to do by members of the Police, Fire and Sanitation Departments and other municipal departments, acting in their official capacity.

4. On hearing the approach of fire apparatus, driver must immediately start his motor so as to be ready to leave such fire hydrant in order that same may be available for immediate use by the Fire Department.

§ 151. Cruising of taxicabs prohibited.

1. A driver of a taxicab shall not operate his vehicle along a street for the purpose of soliciting passengers or searching for passengers.

2. No person shall operate an empty taxicab on Fifth Avenue, from 26th street to 60th street, between the hours of 8:00 A.M., and 8:00 P.M. daily. A driver of a taxicab discharging a passenger on Fifth Avenue shall drive off Fifth Avenue by making a right turn at the first street where such turn is permitted.

§ 152. Loading or unloading in taxicab stand area.

A driver of a taxicab while awaiting employment on a taxicab stand or taxi feed line shall move out of said stand upon request of a driver of a vehicle whose purpose is to expeditiously load or unload merchandise within the area of the taxicab stand.

ARTICLE 13
Miscellaneous

§ 160. Streets designated as play streets.

FOREWORD

The Police Commissioner urges all to study these laws and regulations, and to at all times comply with them.

Strict compliance with these regulations will tend to materially reduce accidents.

PLEASE READ THE PARKING REGULATIONS CAREFULLY.

When it is deemed necessary, a police officer is authorized to give orders and instructions contrary to any provision of these laws and regulations for the purpose of expeditiously moving traffic. The issuance of such orders will lawfully permit you to execute a traffic movement under the officer's direction for which a summons would be issued under ordinary conditions.

The Police Commissioner directs all members of this Department to enforce these laws and regulations in a reasonable, intelligent and common-sense manner, with patience and courtesy extended to all.

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The following regulations shall govern traffic on all streets of the city designated as play streets:

1. Play streets, designated as such by the Police Commissioner, are to be used primarily for children to play in.
2. All vehicles are prohibited from using any street designated as a play street, except as the requirements of the occupants and owners of the property abutting such play street may call for.
3. The regulations governing play streets shall be in effect from 8:00 A.M., to one-half hour after sunset, daily.

§ 161. Minimum age for drivers of horse-drawn vehicles.

The driver of a horse-drawn vehicle shall not be less than 16 years of age.

§ 162. Vehicle, marking of.

Every vehicle other than a vehicle bearing state registration plates, operated on the streets of the city, shall at all times display, plainly marked on both sides in letters and numerals not less than three inches in height, the name and address of the owner thereof. (NOTE: VIOLATIONS OF THIS SECTION ARE RETURNABLE TO DISTRICT MAGISTRATES COURT.)

§ 163. Peddlers.

No peddler, vender, hawker or huckster, shall stop or remain or permit any cart, wagon or vehicle, owned or controlled by him, to stop, remain upon or otherwise encumber any street in front of any premises, the owner of or lessee of the ground floor thereof objecting thereto. No peddler, vender, hawker, or huckster, shall permit his cart, wagon or vehicle to stand on any street within twenty-five feet of any corner of the curb, or to stand at any time on any sidewalk, nor within five hundred (500) feet of any public market, nor within two hundred (200) feet of any school house, public or private. (NOTE: VIOLATIONS OF THIS SECTION ARE RETURNABLE TO DISTRICT MAGISTRATES COURTS.)

§ 164. Cattle, calves, sheep and swine.

No cattle, calves, sheep or swine shall be driven in any street without a permit from the Police Commissioner, and in strict accordance with the routes, hours and other conditions prescribed thereby; provided that cattle, calves, sheep or swine, landed at the foot of a street leading to the slaughter-house to which they shall be destined, may be driven along such street, if the same shall be effectively barred or closed so as to prevent the escape of any said animals during their transfer from the dock to the slaughter-house. (NOTE: VIOLATIONS OF THIS SECTION ARE RETURNABLE TO DISTRICT MAGISTRATES COURTS.)

§ 165. Reporting accidents by drivers of other than motor vehicles.

The driver of any vehicle other than a motor vehicle involved in an accident resulting in death or injury to a person or damage to property, must stop and give his and his employer's name and address to the party sustaining injuries or damage, and in the case of death or injury, he must in addition to the above, without delay, report the accident to the nearest police station, unless he has supplied the information to a police officer on the scene. (NOTE: Accidents involving motor vehicles or motorcycles shall be reported as required by the Vehicle and Traffic Law of the State of New York.)

§ 166. Muffler cut-outs.

No operator or driver of any motor vehicle or motorcycle shall use any cut-out, fitting or other apparatus or device which shall allow the exhaust gas to escape into the atmosphere without passing through a muffler or silencer.

§ 167. Smoking vehicle.

No driver shall proceed while his vehicle is emitting dense or unnecessary quantities of smoke.

§ 168. Steamship Waiting Lines.

No person shall park or stand a vehicle in an officially designated steamship waiting line, unless awaiting entry into a pier, and provided such vehicle is faced in the direction of traffic and is not left unattended.

ARTICLE 14

Special Market Regulations

§ 180. A driver of a vehicle or combination of vehicles over 33 feet in length, including load, for the transportation of merchandise shall not enter or traverse any of the following streets in the Borough of Manhattan:

Park Pl., Murray St., Warren St. and Chambers St. between West St. and West Bway;

Section 435 of the New York City Charter provides that a violation of these rules and regulations is punishable by imprisonment for not more than thirty (30) days, or by a fine of not more than fifty dollars, or by both such fine and imprisonment.

ARTICLE 1

§ 1. Definitions.

The following terms when used in these regulations unless otherwise expressly stated, or unless the context or subject matter otherwise requires, shall be deemed to mean and include:

1. "Authorized emergency vehicle" shall mean vehicles of the fire department (fire patrol), police vehicles, ambulances, and emergency vehicles of federal, state or municipal departments or public service corporations and such other vehicles as are designated or authorized by the Police Commissioner.

2. "Bicycle" shall include any vehicle consisting of an arrangement of a combination of two wheels, one following the other, supported by a frame, propelled by the feet acting upon pedals.

3. "Blind curve" means a curve on a two-way street where the straightaway of the street is not visible from the centre line of the street at the start of the curve.

4. "Commercial vehicle" means a vehicle constructed for, adapted for or generally engaged in carrying merchandise.

5. "Crosswalk" shall include that portion of a public highway clearly indicated for pedestrian crossing by lines or other markings or the extension of the sidewalk space across intersecting streets.

6. "Crosswalk lines" means single white lines painted on a street indicating and outlining limits of pedestrian crossings.

7. "Cruising" shall mean the movement of unoccupied taxicabs or horse drawn cabs over the streets in search of, or soliciting, prospective passengers for hire.

8. "Curb" shall include the boundaries of the street whether marked by curbstones or not so marked.

9. "Designated parking space." That part of any street designated by competent authority and indicated by signs as a place for the parking of vehicles.

10. "Driver" shall mean any person operating, driving, propelling or leading any vehicle.

11. "Intersection" shall include the area bounded by the curb lines, real or projected, of two or more streets which meet or cross each other.

12. "Lights" (Traffic control signal devices):

(a) "Official traffic control devices" shall mean and include all signs, signals, markings and other devices placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, restricting, warning or guiding traffic.

(b) "Official traffic control signal" means a signalling device operated manually, physically or mechanically, in which different colors or directional signals are shown for periods of time during which the driver shall comply with the meaning conveyed by the colors or directional signals shown.

(c) "Progressive traffic control signal system" means and includes a number of traffic control signals at various intersections, and points along a street controlling traffic only at such intersections, and points where traffic signals are operated.

(d) "Simultaneous traffic control signal system" means a number of traffic control signals along a street so operated as to show the same color indications along the street at the same time, and control traffic at all intersections, or points in the area so designated, and between its first and last signalized intersections, or points.

(e) "Isolated traffic control signal" means a traffic control signal which is not part of a simultaneous or progressive traffic control signal system and which controls traffic only at an intersection, or location at which it is operated.

13. "Motorcycle" shall mean a vehicle propelled by other than muscular power which is so designed that the operator steers the vehicle by turning the single front wheel of the vehicle by means of handle bars.

14. "Motor vehicle" shall include all vehicles propelled by any power other than muscular power, except motorcycles.

15. "Omnibus" shall mean any motor vehicle designed, adapted or used for the transportation of passengers, operating for hire, including vehicles engaging in what is commonly known as courtesy operation, except

vehicles engaging in what is commonly known as taxicab, livery, or drive-yourself service.

(a) "Charter omnibus" shall mean an omnibus engaging in a specific or special trip in the nature of an excursion or outing for which it has been hired or otherwise engaged by oral or written contract for the exclusive use of the charterer.

(b) "Interstate omnibus" shall mean an omnibus which operates between a point within the City of New York and a point without the State of New York.

(c) "Intrastate omnibus" shall mean an omnibus which operates only in the State of New York between a point within and a point without the City of New York.

(d) "Long haul omnibus" shall mean an intrastate or interstate omnibus operating to or from a point more than fifty miles from Columbus Circle in the City of New York.

(e) "Short haul omnibus" shall mean an intrastate or interstate omnibus operating to or from a point not more than fifty miles from Columbus Circle in the City of New York.

(f) "Sight-seeing omnibus" shall mean an omnibus carrying passengers for hire from a fixed point in the City of New York, at which point the passengers embark and are generally discharged, to a place or places of interest or amusement in the City of New York, and shall include a charter omnibus, as defined in these regulations, when engaged in a sight-seeing operation.

16. "Person" shall mean an individual, partnership, company, corporation, association, estate, receiver, lessee, or trustee or representative thereof.

17. "Park, parking, or parked" shall mean the stopping or standing of a vehicle, whether occupied or not, except as follows:

(a) When actually and expeditiously engaged in loading or unloading merchandise.

(b) While actually engaged in discharging or taking up passengers.

(c) When necessary to avoid conflict with other vehicles, pedestrians, animals, or other traffic.

(d) When in compliance with the direction of a police officer or traffic control device.

18. "Right of way" shall mean the right of any pedestrian or driver, proceeding in a lawful manner, to be free from unreasonable danger, challenge or interference by any other user of the street. The term "right of way" shall be given a broad and substantial interpretation in favor of the person possessing the right of way.

19. "Right side of the street" is that part to the right of an actual or imaginary line dividing the street longitudinally into two equal parts between the lines of the curb. The wrong side of the street is that part which is to the left of the above described actual or imaginary line.

20. "Safety Zone" shall mean the area of space officially set apart within a street for the exclusive use of pedestrians and from which vehicles are excluded.

21. "Sidewalk" means that portion of a street between the curb lines or the lateral lines of a roadway and the adjacent property lines and intended for the use of pedestrians.

22. "Stop lines" means two white lines painted about one foot apart on a street to indicate to drivers the place of stop when signalled.

23. "Street" shall include a highway, avenue, road, tunnel, bridge, viaduct, bridge parkway, park drive, roadway, road street, and similar areas, and shall be interpreted synonymously and shall mean that part of any public way, improved or unimproved, designated and intended for vehicular traffic.

24. "Vehicle" shall include any device, except a baby carriage, in, upon or by which any person or property is, or may be transported or drawn upon a street irrespective of the motive power, including a horse being led or ridden.

2. Scope of regulations.

These regulations shall apply to pedestrians, drivers, vehicles, streets, and to every person riding, leading or driving an animal.

3. Forbidden acts and omissions.

It shall be unlawful for any person to do an act forbidden or fail to perform any act required by these regulations.

ARTICLE 2
Parking

10. No person shall park a vehicle:

(a) More than one hour on any street beween 7:00 a.m. and 12 midnight unless otherwise restricted.

(b) More than two hours in a designated parking space.

(c) More than three hours between 12 midnight and 7:00 a.m.

NOTWITHSTANDING ANY SPECIAL REGULATIONS PROHIBITING PARKING DURING CERTAIN HOURS, BUT PERMITTING PARKING DURING OTHER HOURS, VEHICLES MUST IN NO CASE BE PARKED IN EXCESS OF THE TIME LIMITS SPECIFIED IN PARAGRAPHS "a," "b," and "c" OF THIS SECTION.

(d) Other than parallel to and close to the right curb and at either curb on a one-way street, except where angle parking is specifically permitted.

(e) On a crosswalk, or within fifteen feet of a crosswalk.

(f) In front of a public or private driveway.

(g) Within fifteen feet of a car stop safety zone.

(h) Upon any bridge or other elevated structure, or within a highway tunnel.

(i) Other than in accordance with restrictions posted on authorized signs.

(j) Other than an omnibus in a bus stop, or other than a taxicab in a taxicab stand when any such stop or stand has been officially designated by appropriate sign, except that the driver of a vehicle may temporarily stop therein for the purpose of and while actually and expeditiously engaged in loading or unloading, or picking up or setting down passengers.

(k) Principally for the purpose of displaying it for sale.

(l) For the purpose of washing, greasing or repairing a vehicle, except repairs necessitated by an emergency.

(m) Within fifty feet of the nearest rail of a railroad crossing.

(n) Abutting or opposite any street excavation or obstruction when such parking may obstruct traffic.

(o) On the roadway side of any vehicle stopped or parked at the edge or curb of a street. (Double parking.)

(p) In front of an exit or entrance of any theatre, motion picture theatre, or other places of public assemblage during the period of assembly therein.

(q) On a public sidewalk, except when permitted under Article 9, Section 120, subdivision 3 of these Regulations, or under Section 82d7-15.0 of the Administrative Code.

§ 11. Parking in the vicinity of large public gatherings will be subject to temporary regulations established by police authority.

§ 12. Fire hydrants and Fire Stations.

1. A driver shall not stop or stand a vehicle within fifteen (15) feet of a fire hydrant, except under the provisions of Section 150.

2. A driver shall not stop or stand a vehicle in front of an entrance to any fire station and on the side of the street opposite such entrance of any fire station within area indicated by signs or other markings.

§ 13. Driver — parked vehicle.

The driver of a vehicle stopped or parked at the curb shall promptly give way to another vehicle arriving to take on or set down passengers or merchandise.

§ 14. Parking — Doctors' Vehicles.

A duly licensed physician will be permitted to leave his automobile, properly identified by having affixed thereto "MD" or "OI" registration plates issued by the Motor Vehicle Bureau of the State of New York, on the street in front of hospitals, clinics and premises wherein actually attending a patient, for such length of time as may be necessary for that purpose.

§ 15. Parking — Emergency Vehicles.

The driver of an authorized emergency vehicle, as defined herein, shall be permitted to park such vehicle adjacent to the scene of an emergency while actually engaged in activities connected therewith.

§ 16. Parking — Truck-trailers.

No person shall park on any street a truck-trailer without having attached thereto a means of mechanical traction constructed or designed for the purpose of drawing such trailer. This section shall not apply to truck-trailers at loading platforms in the process of loading or unloading.

ARTICLE 3
Safety

§ 20. Dangerous Driving.

Dangerous driving shall mean driving, using or operating any vehicle or appliance or accessory thereof (1) in a manner which unreasonably interferes with the free and proper use of a private or public street or a foot-walk thereof, (2) or unreasonably endangers the users thereof, (3) or

the driver himself, (4) or any occupant of the vehicle he operates, (5) or property.

Dangerous driving is forbidden.

Any person who commits any of the acts contained in the following subdivisions shall be guilty of dangerous driving. The provisions in said subdivisions shall not, however, be exclusive.

(a) WEAVING. It shall be unlawful for any driver to weave in and out of traffic faster than nearby drivers thereby unreasonably interfering with the right-of-way of drivers on the right or left.

(b) CUTTING. When traffic is travelling in parallel lines, no driver shall cut from one line of travel to another and unreasonably interfere with the right-of-way of any driver affected by such change in lines, except in an emergency. It shall be presumptive evidence of a violation of subdivisions (a) and (b) if any adjacent vehicle, into the path of which the cut is made, shall slacken its pace abruptly or swerve into any parallel lane or near to any obstruction in the street or object on the side thereof.

(c) SWINGING ON RED. It shall be presumptive evidence of dangerous driving for a driver to make a turn on a red light unless directed by a police officer, an official traffic sign or a green arrow.

(d) THE WRONG SIDE ON A BLIND CURVE. It shall be presumptive evidence of dangerous driving for a driver while travelling on a blind curve on a two-way street to drive with any part of his vehicle on the wrong side of the street.

(e) THE WRONG SIDE UP A HILL. It shall be presumptive evidence of dangerous driving for a driver while ascending a hill to drive with any part of his vehicle on the wrong side of the street within a distance of 300 feet of the crest of the hill.

§ 21. Passing street car on left.

The driver of a vehicle shall not overtake and pass upon the left or drive upon the left side of any street car proceeding in the same direction, whether such street car is actually in motion or temporarily stopped, except:

(a) When so directed by a police officer; or

(b) When upon a one-way street; or

(c) When upon a street where the tracks are so located as to prevent a driver from passing on the right; or

(d) Upon a street where the trolley rails are so placed that two vehicles travelling in opposite directions can pass in safety in the area between the inside rails.

§ 22. Eight-foot law.

In overtaking a street car which has been stopped for the purpose of receiving or discharging a passenger, a driver shall not drive to the right of a door or footboard so that his vehicle comes within eight (8) feet of any such part of such car so long as the same is stopped and remains standing for the purpose aforesaid, but if safety isle signs shall be in place where the street car stops, said driver may pass between the signs and the curb.

§ 23. Starting vehicle.

No person shall start a vehicle which is stopped, standing or parked unless and until such movement can be made with reasonable safety.

§ 24. Riding on handlebars — trick riding — prohibited.

No driver of a motorcycle or bicycle shall carry any other person thereon, except on a seat securely fastened to the machine in the rear of the driver and provided with foot rests and hand grips or in a side car attached to a motorcycle, nor practice any fancy or trick riding upon any street.

§ 25. Use of coasters, roller skates and similar devices.

No person upon roller skates, or riding in or by means of any coaster, toy vehicle, or similar devices, shall go upon any street except while crossing a street or a crosswalk and except upon streets set aside as play streets when and as authorized by competent authority. Persons under sixteen (16) years of age violating this section shall not be summoned or arrested, but warned.

§ 26. Coasting.

Coasting on a down-grade with the clutch disengaged or the gears of a vehicle in neutral is prohibited.

§ 27. Towing and trailers.

No vehicle shall be used to tow more than one other vehicle on a street, except vehicles of municipal departments, vehicles on rails or tracks, and in any case the tow line or connection shall not be longer than sixteen (16) feet.

The hand brake shall be adequate to hold the vehicle stationary on any grade upon which operated.

3. Brake tests may be made with an approved decelerometer which holds its reading until released, calibrated to read in stopping distances corresponding to the maximum rate of deceleration during the stopping period, regardless of the actual distance covered in the test.

4. It shall be unlawful to drive a motor vehicle which does not comply with these standards.

5. Whenever a police officer shall test a brake and finds that it fails to meet the standard, he shall notify the driver of the car that said driver or owner shall have the right to demonstrate and test the brake before legal action is taken under this section. Such test shall be made forthwith. A police officer shall not stop nor test the brake or steering apparatus of any vehicle unless he has reasonable cause to believe that the brake or steering apparatus is defective. Said brake and steering apparatus tests shall be made only by police officers specially designated by the Police Commissioner as qualified by training to make them. Any such police officer shall, before he drives such vehicle, upon the request of the driver, show his state operator's license to the driver.

§ 102. Lights while driving or parking.

No driver shall operate a motor vehicle on a street during the period from one-half hour after sunset to one-half hour before sunrise unless such vehicle shall display at least two lighted lamps on the front, one on each side, having a light source of equal power, which shall be visible from a point five hundred feet ahead of the vehicle and which shall project either white or yellow light, and one lighted lamp on the rear which shall display a red light visible from the rear for a distance of at least five hundred feet; and which shall shine upon the number plate in such a manner as to render the numerals thereon visible for at least fifty feet in the direction from which the vehicle is proceeding. No driver shall operate a motorcycle unless it is equipped during the same periods with one lighted lamp in front and one on the rear, or, when such motorcycle is operated with passenger or other truck attached to side or front, two such lamps on the front. The light of the front lamp or lamps of a motorcycle shall be white or yellow and be visible at a point at least two hundred feet ahead of the motorcycle and the ray of the rear lamp, which shall include a red light visible from the rear, shall shine upon the number plate in such a manner as to render the numerals thereon visible for at least fifty feet in the direction from which the motorcycle is proceeding.

A person shall be permitted to park a motor vehicle during the period above described without displaying lights, provided said vehicle is equipped with a reflector as provided for in the Vehicle and Traffic Law of the State of New York. Nothing herein shall be construed as a permission to violate parking regulations.

This section shall not apply to street cars or motormen thereof.

§ 103. Vehicles not to have other than white or yellow light in front.

No driver of a passenger vehicle, except the driver of an ambulance, a police vehicle, an omnibus having a seating capacity of more than seven passengers, an emergency vehicle of a public utility company, or a motor vehicle operated by a chief or assistant chief of a fire department while such vehicle is in use for fire or other emergency service, shall proceed if his vehicle shall have other than a white or yellow light affixed to the front thereof.

§ 104. Lights on horse-drawn vehicle and push-carts.

Every horse-drawn vehicle and push-cart using the streets shall show, between sunset and sunrise, a light or lights so placed as to be seen from the front, rear and each side, and of sufficient illuminating power to be visible a distance of two hundred feet.

ARTICLE 8
Turns

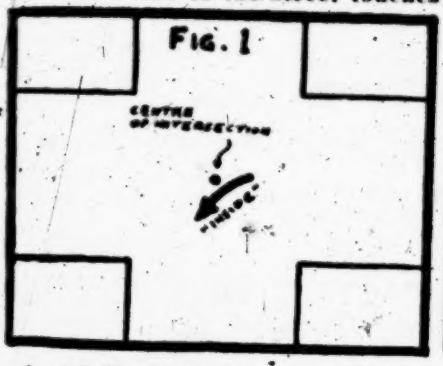
§ 110. Manner of turning at intersections.

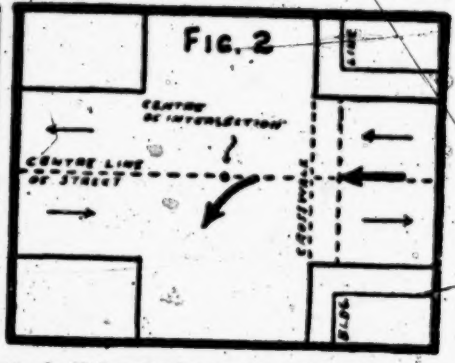
Unless otherwise expressly provided, the driver of a vehicle intending to turn at an intersection shall do so as follows:

1. Both the approach for a right turn and a right turn shall be made as close as practical to the right curb.

2. All left turns shall be "inside," to the left of the center of the intersection, (Fig. 1) but the driver of a vehicle which is too long to make an inside turn may turn on any part of the intersection.

3. A left turn from a two-way street shall begin at the point where the center line of the street touches the crosswalk (Fig. 2).

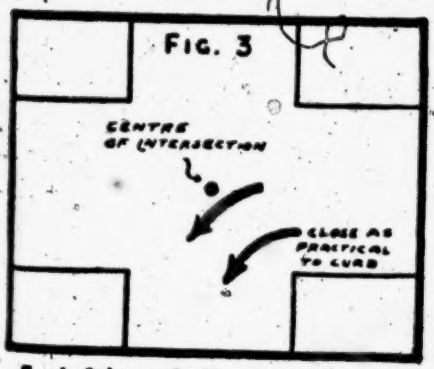


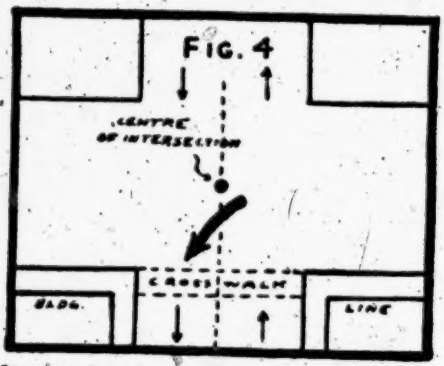


4. A left turn from a one-way street shall be made as in subdivision 3, or may be made by vehicles proceeding along on the left side of such one-way street from the left of the center line of such street but as close as practical to the left curb (Fig. 3).

5. A left turn from a one-way service or side road of a two-way street shall be made from a point as close as practical to the left curb.

6. A left turn into a two-way street shall be made so as to enter said street at the crosswalk to the right of the center line of said street (Fig. 4).





7. A driver shall not make a turn from a two-way street by driving on the wrong side of the street to pass vehicles stopped at an intersection.

111. Left turn; right turn; crossing.

A driver:

(a) Making a left turn, shall grant the right of way to a driver approaching from the right, or proceeding from the opposite direction.

(b) Making a right turn, shall grant the right of way to a driver proceeding straight ahead on an intersecting street.

(c) 1. Making a "U" turn shall grant the right of way to a driver travelling straight ahead. A driver shall not make a "U" turn at a time nor in a manner as to interfere unreasonably with the right of way of pedestrians or vehicular traffic nor where signs forbidding such turns are placed.

2. Making a "U" turn at an intersection shall make such turn only on a green signal.

3. Making a "U" turn at an intersecting one-way street, shall make such turn only in conformity with the directional arrow at such intersecting street.

4. Where "U" turns are permitted, divisional lines — painted or otherwise — may be crossed.

112. Turning on curve at crest of grade prohibited.

No driver shall turn or attempt to turn a vehicle so as to proceed in the opposite direction upon any curve, on the approach to, or near the crest of any grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within two hundred (200) feet. (NOTE: — See Section 74.)

Chambers St., Reade St., Duane St., Jay St., Harrison St. and Franklin St. between West St. and Hudson St.;

North Moore St. and Beach St. between West St. and Greenwich St.;

Washington St. between Barclay St. and Hubert St.;

Greenwich St. between Barclay St. and North Moore St.)

Caroline St. and Staple St.

§ 181. Parking of Vehicles is Prohibited:

a. 24 hours daily:

Chambers St. from West St. to West Bway. and Hudson St.

Caroline St. and Staple St.

b. from 9 p.m., daily, to 8 a.m. the next day:

Barclay St., Park Pl., Murray St. and Warren St. between West St. and West Bway.;

Reade St., Duane St., Jay St., Harrison St., Franklin St., North Moore St. and Beach St. between West St. and Hudson St.;

Washington St. between Barclay St. and Hubert St.; Greenwich St. between Barclay St. and Beach St.

§ 182. Waiting Lines:

No person shall park or place a vehicle in a waiting line in the areas herein indicated, except that he may do so pending entry into the market area at locations indicated during the hours specified, provided he shall face said vehicle in the direction of traffic:

The parking provisions of these Regulations in respect to designated bus stops, area of street intersections and 15 feet each side of fire hydrants, shall remain in full force and effect:

From 9 p.m., daily, to 8 a.m. the next day:

West Bway., along east curb, from Barclay St. to Chambers St.;

Hudson St., along east curb, from Reade St. to Ericsson Pl.;

West St., in lines 10 feet east and 10 feet west of street light poles, from Park Pl. to Warren St.;

West St., in two lines west of the easterly columns of the Miller Hway., from Harrison St. to Franklin St.;

West St., in lines 10 feet east and 10 feet west of the easterly columns of the Miller Hway., from Franklin St. to Laight St.

§ 183. Vehicle not to be Unattended.

No driver or person in charge of a vehicle shall leave such vehicle unattended while loading or unloading or otherwise halted in areas specified in Sections 181 and 182, but such driver or other person shall be present at all times and prepared to move such vehicle in case of fire or other emergency.

ARTICLE 15

Special Midtown Truck Regulations

§ 190. Between the hours of 8:00 A.M. to 6:00 P. M. daily except Sundays, from 14th to 59th Streets, 3rd to 9th Avenues, all inclusive, in the Borough of Manhattan:

No driver of a vehicle or combination of vehicles used for transportation of merchandise shall stop, stand or park in any of the streets herein designated other than parallel and close to the curb and occupy not more than ten (10) feet of roadway space from the nearest curb, and in no case shall any such vehicle be backed in at any angle to curb; except that trucks carrying coal or coke and equipped for rear discharge may back into curb for unloading purposes.

No driver shall stop or stand a vehicle or combination of vehicles for the purpose of loading or unloading merchandise or materials in any one block of streets herein designated, for a period of more than two hours. A vehicle or combination of vehicles not being expeditiously loaded or unloaded is deemed to constitute a parked vehicle subject to parking regulations applicable to that particular location.

ARTICLE 16

Special Commercial Vehicle (Truck) Routes

§ 197. A driver of a vehicle, or a combination of vehicles, for the transportation of merchandise, having an over-all length of 33 feet or more, including load and bumpers, shall operate such vehicle over the following streets only; except that, subject to the provisions of Section 180, a driver may operate on a street not designated below for the purpose of making a delivery, loading or servicing, by leaving such designated street which is nearest such place of delivery, loading or servicing, proceeding by the most direct route, and then returning to the nearest of such streets designated below by the most direct route.

MANHATTAN

Academy St., Nagle Ave. to 10th Ave.
Allen St., Pike St. to 1st Ave.
Amsterdam Ave., 59th St. to 181st St.
Battery Pl., West St. to State St.
Bowery, Chatham Square to Houston St.
Bowling Green, Whitehall St. to Battery Pl.
Broadway, Columbus Ave. to 230th St.
Broome St., Varick St. to Chrystie St.
Canal St., West St. to Bowery.
Chambers St., Hudson St. to New Chambers St.
Chrystie St., Broome St. to 2nd Ave.
Church St., Trinity Pl. to 6th Ave.
Columbus Ave., 59th St. to 65th St.
Delancey St., Clinton St. to Bowery.
Duane St., Park Row to Reade St.
Fort Washington Ave., 178th to 181st Sts.
Grand St., Varick St. to F.D.R. Dr.
Greenwich St., Battery Pl. to Trinity Pl.
Houston St., 1st Ave. to West St.
Hudson St., West Broadway to 14th St.
James Slip, James St. to South St.
James St., Chambers St. to James Slip.
Kenmare St., Bowery to Lafayette St.
Lafayette St., Broome to Kenmare Sts.
Lenox Ave., 110th to 125th Sts.
Nagle Ave., Broadway to 10th Ave.
New Bowery, New Chambers St. to Chatham Sq.
New Chambers St., Chambers St. to James St.
Park Ave., 125th St. to 135th St.
Pike Slip, South St. to Pike St.
Pike St., Pike Slip to Allen St.
Reade St., Duane St. to Hudson St.
South St., Whitehall St. to Pike Slip.
State St., Battery Pl. to Whitehall St.
Trinity Pl., Greenwich St. to Church St.
Varick St., West Broadway to Houston St.
West Broadway, Vesey to Varick Sts.
West St., Battery Pl. to Gansevoort St.
Whitehall St., South St. to Bowling Green.
1st Ave., Allen St. to 125th St.
2nd Ave., Chrystie St. to 128th St.
6th Ave., Church St. to Houston St.
9th Ave., 14th St. to 59th St.
9th Ave., 202nd St. to 207th St.
10th Ave., Academy St. to 202nd St.
10th Ave., Nagle Ave. to Broadway.
10th Ave., 14th St. to 59th St.
11th Ave., Gansevoort St. to 57th St.
12th Ave., 22nd St. to 57th St.
14th St., F.D.R. Dr. to 11th Ave.
23rd St., F.D.R. Dr. to 12th Ave
34th St., 1st Ave. to 12th Ave.
42nd St., 9th Ave. to 12th Ave.
57th St., 1st Ave. to 12th Ave.
110th St., Lenox Ave. to Broadway.
125th St., 1st Ave. to 12th Ave.
128th St., 2nd Ave. to 3rd Ave. Bridge.
135th St., Park Ave. to Madison Ave., and Madison Ave. Bridge.
145th St., Lenox Ave. to Broadway.
155th St., Macombs Pl. to Broadway.
178th St., Amsterdam Ave. to Fort Washington Ave.
179th St., Amsterdam Ave. to Fort Washington Ave.
181st St., Amsterdam Ave. to Fort Washington Ave.
202nd St., 10th Ave. to 9th Ave.
207th St., Broadway to 207th St. Bridge.

BRONX

Bailey Ave., Sedgwick Ave. to 230th St.
Baychester Ave., Bruckner Blvd. to 233rd St.
Boston Rd., Pelham Parkway to City Line.
Boston Rd., 3rd Avenue to 175th St.
Broadway, 230th St. to City Line.
Bruckner Blvd., Lincoln Ave. to Baychester Ave.
Fdw. L. Grant H'way., Jerome Ave. to Washington Bridge
Exterior St., 134th St. to Jerome Ave.
Fordham Rd., 207th St. Bridge to Pelham Parkway.
Gun Hill Rd., Jerome Ave. to Baychester Ave.

Hutchinson River Parkway, Service Roadways, Whitestone Bridge to Bruckner Blvd.
Jerome Ave., Macombs Dam Bridge to City Line.
Major Deegan Blvd., Triborough Bridge to Exterior St.
Pelham Parkway, Fordham Rd. to Boston Rd.
River Ave., 149th St. to Jerome Ave.
Sedgwick Ave., Jerome Ave. to Bailey Ave.
Southern Blvd., Boston Rd. to Fordham Rd.
University Ave., Washington Bridge to West Burnside Ave.
West Burnside Ave., University Ave. to Jerome Ave.
Willis Ave., 134th St. to 149th St.
3rd Ave., 3rd Avenue Bridge to Boston Rd.
138th St., Madison Avenue Bridge to Bruckner Blvd.
149th St., 149th Street Bridge to Bruckner Blvd.
161st St., Jerome Ave. to 3rd Ave.
175th St., Boston Rd. to Southern Blvd.
230th St., Bailey Ave. to Broadway.
233rd St., Jerome Ave. to Boston Rd.

BROOKLYN

Atlantic Ave., Atlantic Ave. Ferry to Rockaway Ave.
Avenue "M," Flatlands Ave. to Kings Highway.
Avenue "N," MacDonald Ave. to Kings Highway.
Bay Ridge Ave., Shore Rd. to 3rd Ave.
Bedford Ave., Taylor St. to Empire Blvd.
Bridge St., John to Nassau Sts.; and from Flatbush Avenue Extension to Fulton St.
Broadway, Kent to Jamaica Aves.
Clay St., Manhattan Ave. to Commercial St.
Columbia St., Hamilton to Hallack Aves.
Concord St., Flatbush Avenue Extension to Jay St.
Commercial St., Manhattan Ave. to Franklin St.
Driggs Ave., Broadway to South 3rd St.
East New York Ave., St. Johns Place to Rockaway Ave.; and from Schenectady Ave. to Utica Ave.
Empire Blvd., Bedford to Utica Aves.
Flatbush Avenue Extension, Manhattan Bridge to Fulton St.
Flatbush Ave., Fulton St. to Atlantic Ave.
Flatlands Ave., Avenue "N" to Pennsylvania Ave.
Flushing Ave., Navy St. to Classon Ave.
Foster Ave., Kings Highway to Remsen Ave.
Franklin St., Commercial St. to Kent Ave.
Front St., Fulton to Bridge Sts.
Fulton St., Furman to York Sts.
Fulton St., Rockaway to Van Sinderen Aves.
Fulton St., Jewel Sq. to Borough Lines.
Furman St., Atlantic Ave. to Fulton St.
Grand St. Extension, Havemeyer to Grand Sts.
Grand St., Grand St. Extension to Grand Street Bridge.
Greenpoint Ave., Franklin St. to Greenpoint Avenue Bridge.
Hamilton Ave., Hamilton Ave. Ferry to 3rd Ave.
Herkimer St., Van Sinderen Ave. to Broadway.
Hicks St., Hamilton to Atlantic Aves.
Howard Ave., Kings Highway to St. Johns Pl.
Hoyt St., Fulton St. to Atlantic Ave.
Jamaica Ave., Broadway to Sheffield Ave.
Jay St., Fulton to York Sts.
Kent Ave., Franklin to Penn Sts.
Kings Highway, Avenue "N" to East New York Ave.
Lafayette Ave., Flatbush to Bedford Aves.
Linden Blvd., Pennsylvania Ave. to Borough Line.
MacDonald Ave., 10th Ave. to Belt Parkway.
Manhattan Ave., Vernon Ave. Bridge to Clay St.
Meeker Ave., Union Ave. to Kosciusko Bridge.
Metropolitan Ave., Grand St. to Metropolitan Ave. Bridge.
Myrtle Ave., Flatbush Ave. Extension to Borough Line.
Navy St., Tillary St. to Flushing Ave.
Pennsylvania Ave., Fulton St. to Flatlands Ave.
Penn St., Union to Kent Aves.
Ralph Ave., Foster to Flatlands Aves.
Remsen Ave., Empire Blvd. to Flatlands Ave.
Rockaway Ave., East New York Ave. to Fulton St.
Roebling St., South 5th St. to South 4th St.; Broadway to Lee Ave.
Rutledge St., Kent to Union Aves.
St. Johns Pl., Howard to East New York Aves.
Schenectady Ave., Empire Blvd. to East New York Ave.
Schermerhorn St., Jay St. to 3rd Ave.
Sheffield Ave., Fulton St. to Jamaica Ave.

Shell Rd., Belt Parkway to Neptune Ave.
Smith St., Atlantic Ave. to Fulton St.
South 3rd St., Driggs Ave. to Grand St. Extension.
South 4th St., Roebling to Havermeyer Sts.
Stewart Ave., Metropolitan Ave. to Grand St.
Taylor St., Bedford to Lee Aves.
Tillary St., Jay to Navy Sts.
Union Ave., Meeker Ave. to Rutledge St.
Utica Ave., East New York to Flatbush Aves.
Van Sinderen Ave., Herkimer St. to Broadway.
York St., Fulton to Jay Sts.
3rd Ave., 69th St. to Flatbush Ave.
20th St., 3rd to 10th Aves.
East 31st St., Avenue "N" to Kings Highway.
39th St., 3rd Ave. to 39th St. Ferry.
60th St., 3rd to MacDonald Aves.

QUEENS

Aguilar Ave., Kissena Blvd. to Parsons Blvd.
Astoria Blvd., Vernon Blvd. to Northern Blvd.
Borden Ave., 2nd St. to Grand Ave.
Braddock Ave., Hillside Ave. to Jamaica Ave.
Bridge Plaza, Vernon Blvd. to Jackson Ave.
Broadway, Queens Blvd. to Vernon Blvd.
Beach Channel Dr., Marine Parkway Bridge to Nassau County Line.
Cooper Ave., Myrtle Ave. to Woodhaven Blvd.
Connecting Highway, Kosciusko Bridge to Laurel Hill Blvd.
Cross Bay Blvd., Liberty Ave. to Beach Channel Dr.
Cross Island Parkway, Service Roads, Whitestone Parkway to Francis Lewis Blvd.
Elderts La., Fulton St. (91st Ave.) to 97th Ave.
Francis Lewis Blvd., Cross Island Parkway to Hillside Ave.
Grand Ave., Grand St. Bridge to Queens Blvd.
Greenpoint Ave., Greenpoint Ave. Bridge to Queens Blvd.
Hempstead Ave., Jamaica Ave. to Nassau County Line.
Hillside Ave., Myrtle Ave. to Braddock Ave.
Hollis Court Blvd., Horace Harding Blvd. to Hillside Ave.
Hoyt Ave., 21st St. to Astoria Blvd.
Jackson Ave., Borden Ave. to Northern Blvd.
Jamaica Ave., Braddock Ave. to Nassau County Line.
Jamaica Ave., 242th to 213th Sts.
Kissena Blvd., Northern Blvd. to Aguilar Ave.
Laurel Hill Blvd., Review Ave. to Queens Blvd.
Linden Blvd., Kings County Line to Sunrise Highway.
Linden St., Whitestone Parkway to Northern Blvd.
Merrick Rd., Hillside Ave. to Nassau County Line.
Metropolitan Ave., Kings County Line to Hillside Ave.
Myrtle Ave., Kings County Line to Hillside Ave.
Northern Blvd., Jackson Ave. to Nassau County Line.
Parsons Blvd., Aguilar Ave. to Hillside Ave.
Queens Blvd., Jackson Ave. to Hillside Ave.
Review Ave., Borden Ave. to Laurel Hill Blvd.
Rockaway Blvd., 95th Ave. to Nassau County Line.
Roosevelt Ave., Queens Blvd. to Willetts Point Blvd.
Rust St., 58th St. to Grand Ave.
Starr Ave., Van Dam St. to Greenpoint Ave.
Steinway Ave., Astoria Blvd. to Northern Blvd.
Sunrise Highway, Linden Blvd. to North and South Conduit Aves., also from North and South Conduit Aves. to Nassau County Line.
Underpass—65th Pl., Queens Blvd. to Laurel Hill Blvd.
Union Turnpike, Queens Blvd. to Nassau County Line.
Van Dam St., Starr Ave. to Greenpoint Ave. Bridge.
Vernon Blvd., Borden Ave. to Astoria Blvd.
Whitestone Parkway Service Rds., Whitestone Bridge to Astoria Blvd.
Willetts Point Blvd., Roosevelt Ave. to Northern Blvd.
Woodhaven Blvd., Queens Blvd. to Liberty Ave.
21st St., Queens Midtown Tunnel Plaza to Hoyt Ave.
43rd St., 54th Ave. to Laurel Hill Blvd.
58th St., Northern Blvd. to Rust St.
126th St., Northern Blvd. to Roosevelt Ave.
166th St., Hillside Ave. to Merrick Blvd.
168th St., Merrick Blvd. to Hillside Ave.
212th St., Hillside Ave. to Jamaica Ave.
212th Pl., Jamaica Ave. to Hillside Ave.
213th St., Hempstead to Jamaica Aves.
14th Ave., Whitestone Parkway to Cross Is. Parkway, Service Roads
48th Ave., Jackson Ave. to Vernon Blvd.
50th Ave., 21st Ave. to Vernon Blvd.

81st Ave., Borden Ave. to Broadway.
54th Ave., Laurel Hill Blvd. to 43rd St.
95th Ave., Elderts La. to Rockaway Blvd.
97th Ave., Rockaway Blvd. to Elderts La.

RICHMOND

Bay St., Hylan Blvd. to St. George Ferry.
Forest Ave., Goethals Bridge to Victory Blvd.
Hylan Blvd., Page Ave. to Bay St.
Morningstar Rd., Bayonne Bridge to Forest Ave.
Page Ave., Outerbridge to Hylan Blvd.
Victory Blvd., Forest Ave. to Bay St.

Abstracts from Vehicle and Traffic Law—State of New York

REFLECTORS—SIGNALS

Every auto truck having a width, inclusive of load, of more than seventy (70) inches, and every omnibus having a seating capacity of more than seven (7) passengers shall have securely attached to the back and front thereof two (2) adequate reflectors, one on either side so placed that they will show the width of the vehicle and every trailer, regardless of its width, shall have two adequate reflectors on the rear so placed that they will show the width of the trailer. Every motor vehicle not hereinabove required to have reflectors shall have, at least, one adequate reflector securely attached to the rear. Such reflector may be part of the rear lamp. The reflectors on the rear shall be red and those on the front shall be yellow. * * * (Section 15, Subdivision 2).

Except as otherwise provided herein, it shall be unlawful to operate on any public highway or street in this state any motor vehicle, or combination of motor vehicle and trailer, so constructed or loaded that the driver thereof is unable to indicate clearly by hand signals to approaching and following traffic his intention of stopping or turning, unless such motor vehicle or combination of vehicles shall be equipped with mechanical signals approved by the commissioner of motor vehicles. It shall also be unlawful to fail to cause such signals to be maintained, at all times, in good and sufficient working order, or to fail to use the same when making or preparing to make any stop or turn. The provisions of this section shall not apply to a vehicle or combination of vehicles lawfully operated under registration issued under Section 62 of this chapter or under a similar provision of law of another jurisdiction (Sec. 15, Subd. 18).

INTOXICATED DRIVER

Whoever operates a motor vehicle or motorcycle while in an intoxicated condition shall be guilty of a misdemeanor. Whoever operates a motor vehicle or motorcycle while in an intoxicated condition after having been convicted of operating a motor vehicle or motorcycle while in an intoxicated condition shall be guilty of a felony. * * * (Sec. 70, Subd. 5).

REPORTING ACCIDENTS

Any person operating a motor vehicle or motorcycle who, knowing that damage has been caused to the real property or to the personal property, not including animals, of another, due to the culpability of the person operating such motor vehicle or motorcycle, or to accident, leaves the place where the damage occurred without stopping, exhibiting his license and giving his name, residence, including street and number, and license number to the party sustaining the damage, or to a police officer, or in case no police officer nor the person sustaining the damage is present at the place where the damage occurred then reporting as soon as physically able the same to the nearest police station, or judicial officer, shall be guilty of a misdemeanor. Any person operating a motor vehicle or motorcycle who, knowing that injury has been caused to a person, due to the culpability of the person operating such motor vehicle or motorcycle, or to accident, leaves the place of such injury or accident, without stopping, exhibiting his license and giving his name, residence, including street and number, and license number, to the injured party and also to a police officer, or in case no police officer is in the vicinity of the place of said injury or accident, then reporting as soon as physically able the same to the nearest police station or judicial officer, is guilty of a misdemeanor. * * * (Sec. 70, Subd. 5a).

Any person operating a motor vehicle or motorcycle which shall strike and injure any horse, dog or animal classified as cattle shall stop and endeavor to locate the owner or custodian of such animal or a police, peace or judicial officer of the vicinity, and take any other reasonable and appropriate action so that the animal may have necessary attention, and shall also promptly report the matter to such owner, custodian or officer, (or if no one of such has been located, then to a police officer of some other nearby community), exhibiting such license and giving his name and residence including street and number and license number. * * * (Sec. 70, Subd. 5b).

Every person operating a motor vehicle which is in any manner involved in an accident, anywhere within the boundaries of this state, in which any person is killed or injured, or in which damage to the property of any one person, including himself, in excess of twenty-five dollars is sustained, shall immediately report the matter in writing to the commissioner. * * * (Sec. 94f, Subd. a).

PROVISIONS APPLYING SPECIALLY TO BICYCLES—EQUIPMENT

Every bicycle, operated or driven upon any public highway in this state, shall be provided with adequate brakes and steering mechanism in good working order and sufficient to control such vehicle at all times when the same is in use, and a suitable horn, bell or other device, which shall produce a sound sufficiently loud to serve as a danger warning but which shall not be used other than as such warning nor be unnecessarily loud or harsh, and a front reflector and a rear reflector each of a type approved by the commissioner, to be applied and adjusted to the bicycle in such manner, as to be visible for at least two hundred feet when opposed by a motor vehicle displaying lawful undimmed headlights at night on an unlighted highway. Every bicycle which is operated or driven on any public highway in this state during the period of one-half hour after sunset to one-half hour before sunrise shall display a lighted lamp on the front which shall be visible from a point five hundred feet ahead of such bicycle and which shall project either white or yellow light. (Section 70.)

Abstracts From Administrative Code of the City of New York

§ 82d7-15.0 of the Administrative Code.

Wares or merchandise in process of loading, unloading, or being received from shipment, may be transferred from trucks or other vehicles over the sidewalk by the use of skids, or by backing up trucks on the sidewalks while so doing.

§ 435-5.0.b. of the Administrative Code.

Unnecessary noises * * * The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this section: * * *

The use of any automobile, motorcycle, street car or vehicle so out of repair, so loaded in such manner as to create loud and unnecessary grating, grinding, rattling or other noise. (Section 435-5.0.b4).

The use of mechanical loud speakers or amplifiers on trucks or other moving vehicles for advertising or other purposes except upon specific permit therefor from the Police Department.' (Section 435-5.0.b12).

Abstracts From Traffic Rules and Regulations Department of Parks, Affecting Parks and Park Streets

ARTICLE IV

§ 40. Traffic control.

A rate of speed exceeding twenty-five miles per hour is prohibited in any park or park street, unless herein specifically otherwise provided for by traffic signs. * * *

§ 41. Restrictions on vehicles.

(a) Commercial vehicles. Vehicles constructed or adapted for or engaged in the carrying of merchandise, trucks and trailers are prohibited from using any park except where necessary to make deliveries in such park. Wherever service roads adjoin the main roadway of a park such vehicles are required to use the service roads set apart for

such use. In all cases such vehicles must enter such park from the nearest street intersection or entrance in the direction of traffic and leave by the nearest intersecting street or exit in the direction of traffic. * * *

(c) Omnibuses. No person shall drive or operate within any park any omnibus adapted for more than seven passengers except under a permit. Omnibuses known as outing buses will be permitted to operate between the shortest possible routes from outside a park to deliver or pick up its passengers from a picnic, bathing or other recreation area only if a permit to enter the park has been issued to the person sponsoring the outing, picnic, etc. Buses must proceed over the route and to the parking space designated in the permit. Parking in the designated parking space will be limited to the time prescribed in the permit. Public omnibuses will be permitted to operate only under a special franchise.

(d) No hearse or other vehicle carrying or used for carrying the body of a dead person shall enter or be allowed in any park except by permit.

(e) This section shall apply to vehicles and apparatus of the Fire Department, Insurance Patrol, Police Department or ambulance or to emergency repair wagons of public service corporations or the Department of Parks, EXCEPT RESPONDING FOR EMERGENCY WORK in case of fire, accident, public disaster, impending danger or emergency.

§ 44. Careful driving.

No person shall in any park operate, drive or propel, and no owner, thereof shall cause or permit to be operated, driven or propelled any vehicle recklessly or negligently or at a speed or in such a manner as to endanger or injure persons or property.

§ 45. Restricted areas.

No person shall in any park drive or operate a vehicle within or upon a safety zone, walk, bridle path or any part of any park designated or customarily used for such purposes. No person shall ride a bicycle, velocipede or scooter in any park, except in places designated for such riding; but persons may push such machines in single file to and from such places, except on benches and boardwalks.

§ 47. Obstructing traffic.

No person shall cause or permit any vehicle to obstruct traffic in any park or park street, or to stop except at those places specifically designated or maintained for the purpose of stopping or parking such vehicle, except in cases of emergency.

§ 48. Parking at night.

No person shall, between one-half hour after sunset and one-half hour before sunrise, stop or park in a vehicle except at places designated or maintained therefor. * * *

§ 49. Towing and Projecting articles.

(a) No person shall cause or permit a vehicle to be towed by another vehicle, in any park except that, in case of breakdown a disabled vehicle may be towed to the nearest exit.

(b) No person shall operate or drive in any park a vehicle containing any person or object projecting or hanging outside or on the top thereof.

§ 50. Driving off pavement.

No vehicle shall be operated or driven off the improved or paved roadways of any park. Disabled vehicles may be driven off the roadway so as to prevent obstruction to traffic, but no disabled vehicle shall be permitted to remain in a park for a longer period than two hours.

§ 51. Working on vehicles.

No person shall in any park clean, grease, lubricate; or make repairs to any vehicle except those of a minor nature and then only in cases of emergency.

§ 53. Parkways.

The following provisions shall govern the use of Grand Central, Interborough, Cross Island, Laurelton, Southern, Shore, Gowanus, Henry Hudson, Bronx River, Hutchinson River, Willowbrook, and Richmond parkways, and Harlem River Driveway:

(a) No peddler, vender, hawker or huckster shall stop or remain on any part of the right-of-way or service roads or entrances.

(b) Turning. Left turns and U turns are prohibited except when specifically allowed by an officer or by a traffic direction sign.

(d) Business vehicles. Wagons, trucks, and other business vehicles are prohibited from using the parkways through their entire length.

nor shall any business be conducted on the right-of-way of such parkways.

(e) The use of such parkways is restricted to automobiles classed as pleasure vehicles, excluding, however, such vehicles when adapted to and used for the carrying of commercial goods or materials. In order to provide for the maximum safe use of such parkways, and to preserve life and limb, the following are forbidden to use such parkways: pedestrians, riders and drivers of horses, bicycles, scooters, motorettes and other similar, small, power-propelled vehicles of two or three wheels; any vehicle having two or three wheels, any of which has an over-all diameter of less than fifteen (15) inches, excluding the tire, shall be deemed to be a scooter, motorette or other similar vehicle excluded by the provisions of this section.

§ 54. Vehicle and Traffic Law and Police Regulations.

The State Vehicle and Traffic Law and the Traffic Rules and Regulations made by the Police Commissioner pursuant to Chapter 18, Section 435 of the New York City Charter are hereby established as rules and regulations of the commissioner and shall be in effect in all parks and park streets with like effect as though set forth herein in full, and the traffic rules and regulations set forth herein are in addition to and supplement the same.

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APPENDIX "B"

COURT OF SPECIAL SESSIONS OF THE CITY OF NEW YORK, APPELLATE PART, FIRST JUDICIAL DEPARTMENT

PEOPLE OF THE STATE OF NEW YORK, *Respondent*,

against

RAILWAY EXPRESS AGENCY, INC., Defendant-Appellant

PEOPLE OF THE STATE OF NEW YORK, *Respondent*,

against

CHARLES GERCHARIO AND 12 OTHERS, *Defendants-Appellants*

Per CURIAM:

The appeals herein are from judgments of conviction against the appellant Railway Express Agency, Inc. and thirteen individual appellants for violations of Section 124 of the Traffic Regulations of the City of New York. The thirteen individual appellants were drivers of trucks for the appellant Railway Express Agency, Inc. All fourteen cases have been consolidated for the purposes of appeal and are being treated as one appeal.

Sec. 124 of the Traffic Regulations of the City of New York reads as follows:

> "Sec. 124. Advertising vehicles.
>
> No person shall operate, or cause to be operated, in or upon any street an advertising vehicle; provided that nothing herein contained shall prevent the putting of business notices upon business delivery vehicles, so long as such vehicles are engaged in the usual business or regular work of the owner and not used merely or mainly for advertising."

The appellant Railway Express Agency, Inc. for some time past has, by contract with an advertising agency and

for valuable consideration, permitted the use of the space on the exterior sides of its numerous trucks plying the streets of the City of New York, for general advertising purposes unconnected with its business. The claim is made on this appeal that Sec. 124 of the Traffic Regulations, correctly interpreted, does not prohibit such practice, and if it does, in such case the regulation is unreasonable and unconstitutional.

In so far as the interpretation of the language of Sec. 124 is concerned, the opinion of the Court of Appeals in Fifth Avenue Coach Company *v.* The City of New York, 194 N. Y. 19, (1909) is controlling. In that case the method of advertising was exactly like that in the instant case, and the language of the ordinance in that case was substantially the same as the language of the regulation under consideration herein. The Court of Appeals held that the ordinance prohibited general advertising for hire whether carried on vehicles wholly used for advertising or in connection with the ordinary or usual business in which the vehicles were engaged; that business notices on vehicles were not prohibited so long as the vehicles were engaged in the usual business or regular work of the owner, but even such notices were prohibited on vehicles used merely or mainly for advertising. By business notices, undoubtedly was meant business notices relating to the business of the owner while the vehicle was being used in the course of the owner's business, otherwise the second part of the ordinance would tend to nullify the prohibition contained in the first part thereof.

The Fifth Avenue Coach Company case was a suit in equity for an injunction against the enforcement of a penal ordinance. The Court in its opinion referred to the fact that the legislative charter provisions of the Fifth Avenue Coach Company did not contain authorization to engage in general advertising for hire. Appellant contends that this implies a holding by the Court that the plaintiff in that case had no standing in equity, and that this being a sufficient reason for ousting the plaintiff the remainder of the opinion was obiter dictum. With this we do not agree. The interpretation of the ordinance was among the main issues litigated and the Court's opinion on this branch of the case constituted one of the several reasons for denying plaintiff

the relief it sought. It was not obiter dictum. (Matter of Broderick *v.* City of New York, 295 N. Y. 363.)

The essential difference between the Fifth Avenue Coach Company case and the instant one is that on this appeal we have before us a traffic regulation whereas in the Fifth Avenue Coach Company case the Court had a city ordinance under consideration. It is probably correct to say that an ordinance regulating the use of city streets may be sustained on broader grounds than a Police Department regulation which is adopted pursuant to the restrictive language of a provision of the Charter of the City of New York, in this case sec. 435 thereof.

The pertinent part of Sec. 435 of the Charter reads as follows:

> "Sec. 435. Department; duties.—The police department * * * shall have the power * * * to * * *; regulate, direct, control and restrict the movement of vehicular and pedestrian traffic for the facilitation of traffic and the convenience of the public as well as the proper protection of human life and health; * * *. The commissioner shall make such rules and regulations for the conduct of pedestrian and vehicular traffic in the use of the public streets, squares and avenues as he may deem necessary * * *."

Appellant disputes the authority of the Police Commissioner to adopt regulation 124. Obviously, in order to sustain the validity of the regulation it must be found to come within the authority of the powers granted the Police Commissioner by Charter Section 435. In the Fifth Avenue Coach Company case the Court found that the display of advertising on vehicles passing through the public streets tends to congestion thereon and to some extent interferes with those engaged in business or having their homes thereon. If the appellants' trucks can be covered on the outside with advertisements for hire, then the business delivery vehicles of all other owners engaged in their usual business or regular work can rightfully do likewise. The Court described in vivid language the effect of such advertising on cars and vehicles of many descriptions and in great numbers in producing congestion upon the streets.

An additional consideration of great importance is the matter of safety. It cannot be doubted that advertising on vehicles daily using the streets of the city do constitute a distraction to vehicle drivers as well as the pedestrian public and do affect the safety of the public in the use of the streets. This element of safety comes directly within the power of the Police Commissioner contained in Sec. 435 of the Charter to regulate the movement of vehicular traffic for the convenience of the public as well as the proper protection of human life and health.

The point is made that in view of the Police Commissioner's authority to regulate the "movement" of vehicular and pedestrian traffic, the traffic regulation must be construed to be directed only to the movement of vehicles operated for no purpose but to carry advertising and not to the movement of vehicles being used in the business of the owner and incidentally carrying advertising. We see no important distinction between the two situations. If movement is prohibited in the one case it can be in the other, provided there is a reasonable basis for each restriction. The regulation prohibits the use of the streets by advertising vehicles of all kinds, whether merely or mainly used for advertising or for advertising not related to the owner's business but while the vehicle is being used in the course of his business. It is the advertising vehicle which is being restricted. It is not a matter of the extent to which a vehicle is used for advertising purposes.

The exception in the regulation permitting business notices of the owner on vehicles is a reasonable one. A distinction between general advertising for profit and business notices is a reasonable classification. (Central Lumber Co. *v.* South Dakota, 226 U. S. 157, 160; Waldorf-Astoria Hotel Co. *v.* The City of New York, 212 N. Y. 97, 107, 108; People *v.* Klinck Packing Co., 214 N. Y. 121, 136, 137.

It is our conclusion that the regulation bears a reasonable relationship to the subject of traffic control and public safety and that it reasonably comes within the charter grant of power to the Police Commissioner. In our opinion, the regulation is constitutional.

Accordingly, the judgments are affirmed.

(Sgd.) GEORGE B. DELUCA,
Justice Presiding.

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Supreme Court of the United States

OCTOBER TERM, 1948

No. 51

51

RAILWAY EXPRESS AGENCY, INC., CHARLES GERCHARIO and others,

Appellants,

vs.

PEOPLE OF THE STATE OF NEW YORK,

Respondent.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF FOR APPELLANTS

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November 16 1948

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Supreme Court of the United States

OCTOBER TERM, 1948.

RAILWAY EXPRESS AGENCY, INC., CHARLES GERCHARIO and others,
Appellants,
vs.
PEOPLE OF THE STATE OF NEW YORK,
Respondent.
No. 51

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF FOR APPELLANTS

This is an appeal pursuant to Judicial Code § 237 from a final judgment of the New York Court of Appeals sustaining, by a vote of four judges to three, the validity of § 124 of the Traffic Regulations promulgated by the Police Commissioner of the City of New York, which prohibits "advertising vehicles" and which appellants attacked as unconstitutional in its application.

Opinions Below

The opinions of the City Magistrates (R. 69, 76) are not reported. The opinion of the Court of Special Sessions, City of New York (R. 82-5), is reported unofficially in 67 NYS 2d 732. The memorandum decision of the Court of Appeals (R. 107-8) is reported in 297 NY 703, the minority's grounds of dissent being at 705.

Grounds of Jurisdiction

The jurisdiction of this Court is invoked under Judicial Code § 237(a), 28 USC § 344 as amended. The Court of Appeals in sustaining Traffic Regulations § 124 necessarily passed upon questions under the Federal Constitution, viz. whether § 124 is repugnant to the Fourteenth Amendment and to Article I § 8 of the United States Constitution, and determined those questions in the negative (amended remittitur, R. 112). On February 16 1948 the New York Court of Appeals allowed appeals to this Court from the final judgment of affirmance (R. 121-2), and on June 21 1948 this Court noted probable jurisdiction (R. 141). The grounds of jurisdiction appear in full in the Statement as to Jurisdiction filed with the New York Court of Appeals and docketed herein, October Term 1947 No. 786.

Statement of the Case

The judgment appealed from affirms convictions in criminal proceedings upon various summonses issued against Railway Express Agency, Inc. and 13 drivers of its delivery trucks. Appellants were found guilty of operating advertising vehicles contrary to the Traffic Regulations made by the New York City Police Commissioner, which provide in material part:

> "§ 124. *Advertising vehicles.*
>
> No person shall operate, or cause to be operated, in or upon any street an advertising vehicle; provided that nothing herein contained shall prevent the putting of business notices upon business delivery vehicles, so long as such vehicles are engaged in the usual business or regular work of the owner

and not used merely or mainly for advertising" (Quoted at R. 38, 82; Appendix A, p. 34 of Statement as to Jurisdiction).

Railway Express Agency, Inc. is a Delaware corporation organized December 6 1928 and authorized since January 22 1929 to do business in the State of New York (R. 38, 87). It is engaged, among other activities, in a nationwide express transportation business operating throughout the United States some 14,500 motor delivery trucks (R. 60-1), about 1,900 of which run within the City of New York (R. 52) and in part to New Jersey railheads (R. 48). These 1,900 trucks carry shipments of which at least 80% move between States (R. 53).

Under broad charter powers (R. 97-100) Railway Express has since 1930 displayed advertising on the sides of its motor delivery trucks, both those moving exclusively within New York City and those moving between New York and New Jersey (R. 104-6). At the present time such advertising appears on the delivery trucks of Railway Express in various parts of the United States pursuant to a nationwide contract with an advertising agency which brings substantial revenue (R. 105-6).

While concededly within the charter power of the corporate appellant, this advertising is displayed by it strictly as an incident to the transportation of merchandise. The record is clear and uncontradicted that Railway Express never sends its trucks through the streets merely or mainly to exhibit advertising (R. 50). They move exclusively to carry merchandise (R. 62). Those trucks carrying the advertising in respect of which these convictions were had were transporting goods at the time in the regular course of appellant's business (R. 55, 59, 72).

Railway Express in the course of its business in New York City carries the greatest diversity of goods including luggage, clothing, movie film, tobacco, stage scenery, food, circus equipment, munitions, etc. which arrive from all parts of the country and proceed to all parts of the country (R. 48-50, 59, 64). The advertising in question is depicted in photographs marked Exhibits 3-8 (R. 91-6); it consisted of paper posters of dimensions from three by seven feet to four by ten feet (R. 7-8) pasted to the sides of the trucks and portraying specified motion pictures, a circus, cigarettes, tobacco, a radio station (R. 40-2). One summons describes the truck in respect of which a conviction was had as advertising on one side a tobacco and on the other side a call for women recruits by the U. S. Navy (R. 22.)[1] All the 1,900 trucks operated by Railway Express in New York and between New York and New Jersey bear advertisements on their sides (R. 52), but some of the placards advertise the business of the company itself (R. 62) and others advertise such matters as War Loans and the Red Cross (R. 52).[2] As shown by the photographs, all the advertising complained of is in the form of framed posters well within the area of the side walls of the delivery trucks.

No complaint was made below, and there are no adverse findings, with respect to the quality, color, size or design of the advertising here involved. It is clear and undisputed that corporate authority exists on the part of Rail-

---

[1]This asserted obstruction to traffic said: "Women the Waves need you". R. 22.

[2]The answers with respect to the Seventh War Loan and the Red Cross were stricken on objection of the prosecution, but it is submitted that this exclusion of evidence was erroneous and that this Court may have regard to evidence wrongfully excluded in passing upon questions properly here.

way Express to do any lawful business which might seem to its board of directors appropriate to be carried on in connection with transportation and that the board expressly sanctioned and approved the display of advertisements for revenue (R. 100, 105-6).

The convictions were predicated on the theory that the New York City traffic regulation in question "was intended to prohibit the type of advertising" in which Railway Express was engaged and that the advertisements had "nothing to do with the business of the persons owning the vehicle making deliveries" (R. 69, 76). The Magistrates' Courts thus adopted in their construction the application of the regulation embodied by the prosecution in the charge and questions to witnesses (R. 39):

> "Did you see any signs on that truck *advertising anything other than Railway Express Agency, Inc.?*" (italics supplied; also R. 41, 73; returns at R. 7, 8 and 10; summons at R. 30; charge at R. 34-5).

The New York appellate courts dealt with the meaning of the regulation, the powers of the Police Commissioner under the City Charter, and the constitutionality of the regulation as applied, but did not change the construction put upon it by the prosecution and the magistrates, viz. that it prohibits Railway Express from displaying notices of the products of others but does not prohibit the display of advertisements of Railway Express itself even though identical in every other respect with the prohibited advertising.

The question for this Court is therefore the constitutional validity of a police regulation which under color of regulating the traffic of delivery trucks necessarily moving in the transport of merchandise, prohibits as advertising

the display of business notices of others, but permits as business notices the advertisements of the truck owner.

Specification of Errors to be Urged

Pursuant to the assignment of errors (R. 120) appellants urge

1. That as construed and applied Traffic Regulations § 124 is so unrelated to traffic control as to deprive appellants of liberty and property without due process of law and deny them the equal protection of the laws in contravention of the Fourteenth Amendment.

2. That as construed and applied Traffic Regulations § 124 places an undue burden upon interstate commerce in contravention of Article I § 8 of the Constitution.

Point I

SECTION 124, AS CONSTRUED AND APPLIED BELOW, DEPRIVES APPELLANTS OF DUE PROCESS AND THE EQUAL PROTECTION OF THE LAWS IN VIOLATION OF THE FOURTEENTH AMENDMENT.

In our submission the unconstitutionality of the traffic regulation in question was correctly announced by the Chief Judge and the two other dissenting Judges of the New York Court of Appeals in their statement (297 NY at 705)

> ". . . that this regulation of the police commissioner as interpreted to forbid these unobjectionable advertisements on defendants' trucks, is so entirely unrelated to traffic control as to be arbitrary as matter of law."

It is important to note at the outset that Traffic Regulations § 124 must stand or fall upon its propriety as an exercise of the Police Commissioner's power to control traffic.[3] Although taken over by the Commissioner from a repealed City ordinance running back in slightly different form to 1882 (respondent's brief in the Court of Appeals p. 6), the regulation in question was promulgated, on February 4 1938, under authority derived exclusively from § 435 of the New York City Charter, adopted by referendum and effective January 1 1938.[4] Section 435 is the only provision in which the New York legislature has delegated to an administrative city officer the power to adopt rules and regulations for the conduct of traffic. *Bus Depot Holding Corp. v. Valentine*, 288 NY 115, 120. It is, therefore, the sole and the exclusive source of power in the Police Commissioner to promulgate § 124, a fact which not only gives

[3]Differing in this respect from the substantially similar language which was involved in the prior decision of this Court, *Fifth Avenue Coach Company* v. *City of New York*, 221 US 467 (1911), discussed at p. 18 below, and which was embodied in a *City ordinance*.

[4]Charter § 435 provides in material part:

> "The police department and force shall have the power and it shall be their duty to . . . *regulate, direct, control and restrict the movement of vehicular and pedestrian traffic* for the facilitation of traffic and the convenience of the public as well as the proper protection of human life and health; . . . The commissioner shall make such rules and regulations for the *conduct of pedestrian and vehicular traffic* in the use of the public streets, squares and avenues as he may deem necessary which shall not become effective until filed with the city clerk and published in the City Record. The violation of such rules and regulations shall be triable by a city magistrate and punishable by not more than thirty days' imprisonment, or by a fine of not more than fifty dollars, or both." (Italics supplied.)

force to the regulation within its proper limits but determines those limits. Clearly § 124 must stand or fall as a *regulation of traffic*.

These appeals, therefore, present the constitutional question in the context of traffic control; they bring up no question as to the appropriate exercise of municipal legislative power, which in New York City resides exclusively in the City Council and includes the "power to adopt and amend local laws . . . in respect to the care, management and use of its streets and property". The Court is not here asked to determine the constitutionality of a local law representing exercise of the municipal legislative authority. It is not claimed, as we understand, that the Police Commissioner has the broad legislative control over the use of the public streets which has been vested exclusively in the City Council.[5]

That the Commissioner assumed to exercise, in Traffic Regulations § 124, only the limited administrative function of regulating the conduct of vehicular traffic in the use of the public streets, with a view to facilitating the movement of traffic, promoting public convenience, and safeguarding life and health, appears from the context in which § 124 is

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[5]New York City Charter §21 provides: "The council shall be vested with the legislative power of the city, and shall be the local legislative body of the city, with the sole power to adopt local laws under the provisions of the city home rule law or otherwise . . ." See also New York Constitution Art. IX § 16; City Home Rule Law Art. II § 11.

In this respect again the present appeal differs from the question presented to this Court with respect to the meaning and application of a municipal *ordinance* containing substantially similar language in *Fifth Avenue Coach Company* v. *City of New York*, 221 US 467.

found.[6] This is one of five sections comprising Article IX of the Traffic Regulations. The caption of Article IX is *Obstructions*. In addition to advertising vehicles (§ 124) it deals with stopping vehicles on cross-walks or intersections, placing vehicles cross-wise on streets, the use of streets traversed by surface cars, occupation of streets by vehicles in obstruction of traffic, retarding traffic by slow speed, entering intersections obstructed by traffic, and backing into curbs. This surrounding subject-matter indicates that § 124 was intended only to exclude from the streets vehicles circulating solely for purposes of display, such as the empty wagon advertising a tailor and drawn along Madison Avenue by two burros or the truck carrying through the Brooklyn streets placards emblazoned with the particulars of a labor dispute.[7] In the former case the magistrate said correctly enough that "the peculiar character of the vehicle used stamps it as an advertising vehicle and the testimony shows that on all three occasions the wagon was not engaged in the business of the owner, but was merely used as an advertising medium, for the officer found no merchandise of any character in the interior" (39 NYS 2d at 239).

The dealing with this kind of obstruction to traffic would seem to have been the primary purpose, and we submit the only proper purpose, of the Traffic Regulation here at bar. But in the absence of any definition in the Regula-

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[6] Appendix A to the Statement as to Jurisdiction, being a printed pamphlet attached to the statement as filed, contains the Traffic Regulations of New York City.

[7] *People* v. *Berkowitz*, 39 NYS 2d 236 (1943); *People* v. *Hopkins*, 147 Misc. 12 (1933). In the *Hopkins* case the posters on the empty truck bore a notice of reward by the A. F. of L. for the arrest and conviction of bomb throwers and carried further notices such as "We stand for decency in unionism Local 306 is now picketing the Patio and Albemarle".

tions themselves of the key words "advertising vehicle" and "business notices", the prohibition of § 124 has been extended so as to exclude from the city streets *even vehicles necessarily moving thereon in the carriage of goods* when they exhibit notices of the products of others, on the theory that these too are advertising vehicles, while at the same time the interpretation thus judicially sanctioned below would permit the same vehicles to display notices of the identical size and form concerning the products of the owner. It is this unwarranted discrimination, wholly lacking in reasonable basis and unrelated to traffic control, which we contend to be arbitrary as a matter of law.

If by virtue of the advertising the Railway Express delivery trucks obstructed traffic, a conviction could be obtained under Traffic Regulations § 121.[8]. If the Railway Express delivery trucks were driven for purposes of incidental display at such a slow speed as to retard traffic, a conviction could be had under § 122.[8] If the operation of the trucks with the advertisements attached constituted dangerous driving in any respect, a conviction could be had under § 20.[8] But the imprisonment or fining of the appellants for these violations would have required the prosecution to establish the facts constituting the crime. By the enlarged interpretation which the New York courts have placed on § 124, they have wrenched it out of the formula of traffic control and made violation turn on the single irrelevant question whether the merchandise advertised on the side of any vehicle engaged in carrying goods through the streets is the product of the owner or of another.

In that way § 124 is transformed from a measure regulating and controlling the movement of vehicles into the

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[8]These provisions are printed in Exhibit A, p. 19, of the Statement as to Jurisdiction filed herein.

prohibition of a business not inherently vicious, and indeed universally recognized as legitimate. By § 124 as construed below, the Police Commissioner will have destroyed the business of vehicular advertising in the City of New York, even though the legislative body of the city has not declared such destruction to be its public policy. Section 124 as construed is the only regulation of advertising attempted to be made in the exercise of administrative functions. All others have been by local laws duly enacted by the municipal legislature subject to the approval of the Mayor. Thus the New York City Administrative Code contains extensive provisions as to the erection and maintenance of signs on buildings, "sign" being defined to include "an advertisement" and special provisions governing "illuminated signs".[9] Illuminated signs are permitted if they conform to regulations prescribed in the Administrative Code.

There ensues under these official permissions, as the Court will judicially notice, publicity which is stupefying in its effect. Illuminated signs of prodigious size and brightness and varied color surround Times Square with visions exceeding any dream of De Quincey. At the moment one advertises a clothier by means of a giant and giantess lightly draped and flanking a Niagara of water, another proclaims a beer with a scintillant railway train running through hot and thirsty badlands such as even Dante could not have imagined, a third seeks customers for the film version of Joan of Arc's life with a concourse of personages so furiously hued as to renew the martyrdom of that saint. This clamor of electric light and movement around Times Square, constituting Broadway the "Great White Way", permitted

[9] L. 1937 ch. 929, § B26-1.0 to B26-19.0.

and governed by the Administrative Code, enormously increases the swarm of pedestrians and vehicles attracted nightly into this area and tends to make it one of the most densely congested districts in the world. And, as the Court will judicially notice, electric signs of every size and type are scattered in profusion in all the business streets of not only New York but every American city. The modest non-illuminated advertising represented by the exhibits in evidence here of course does not approach these illuminated signs in power to distract and command attention or in tendency to cause congestion of traffic.

As distinguished from the illuminated signs licensed by New York City, stationary and non-illuminated advertising goes without regulation in the City of New York, except for a prohibition of the posting of handbills or other advertisements upon curbs and other objects in the streets.[10] The number of non-illuminated signs at eye level, each claiming the attention of the passer-by, must in New York run high in the hundreds of thousands. Strangely enough, one of the most distracting of all forms of publicity is sanctioned under license from the Police Commissioner; for the Administrative Code especially provides for aircraft towing banners over the city *under official license* and bars only within a one-mile radius of outdoor assemblages aircraft "engaged in advertising".[11] It is not suggested that the aerial advertising so authorized is a traffic hazard.

Compared with the electric signs and the sky-advertising recognized by the municipal legislature and sanctioned under license, the advertising posters in the case at bar are indeed "wholly unobjectionable", as was said by the dissenting

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[10]New York Administrative Code § 82D 7-1.0.

[11]Administrative Code §§ 436-4.0 and 436-4.1.

Judges in the Court of Appeals. The majority in the Court of Appeals, the Appellate Part of Special Sessions, and the magistrates who found appellants guilty did not say the contrary. They found only that the Railway Express delivery trucks were "advertising vehicles" because they carried unobjectionable notices describing the products of others rather than "business notices" of Railway Express. This extension by interpretation of § 124[12] was a denial to appellants of due process and the equal protection of the laws.

1. *Due Process of Law.* Prohibition of the advertising conducted by appellants as a mere incident to their permitted activity of transporting merchandise is an abuse of the police power and an arbitrary act entirely lacking in any relationship to traffic control. It is clear that the delivery trucks in respect of which the summonses were served would have operated in the same manner whether or not they carried any notices whatever. It is clear too that they burdened traffic no more and no less by virtue of the advertising prohibited under the interpretation below than they would by

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[12]Not until service in December 1944 of the flurry of summonses leading up to the judgment under review was any serious effort made by the City to enforce this interpretation of the Regulation or the preceding municipal ordinance, notwithstanding the display of advertising by Railway Express in New York in substantially the same manner since 1930. In 1938 a City magistrate held the corporate appellant's truck advertising to be a violation of § 124. *People* v. *Kearns*, 168 Misc. 264. However, no attempt was made until 1944 to enforce this extended construction of § 124. In 1932 another magistrate had held the Railway Express advertising not to be a violation (opinion unreported but described in 168 Misc. at 265). Substantially the same language has been held by the Supreme Court of Nebraska and by a Hartford (Conn.) Police Court to permit vehicular advertising. *State* v. *Hind*, 143 Neb. 479, 10 NW 2d 258 (1943); *State of Connecticut* v. *Cody* (Hartford Police Court 1946; unreported).

virtue of the "business notices" expressly authorized by § 124. No proof was offered to show that, if all the advertising posters of Railway Express were removed, the number of trucks now being operated by it would be reduced, or that they would be operated at a different speed, or that the streets now used would not be used, or that the fixed delivery routes now followed would be affected in any degree. On the contrary, the uncontradicted testimony is that the number of the vehicles and the direction of their movement are dictated exclusively by the amount and destination of the cargoes to be delivered (R. 48-50, 62). There is no contention that the posters in themselves are an obstruction to traffic, affixed as they are flat against the sides of the delivery trucks.

Although some of the trucks involved were found by the arresting officers in busy and congested districts, such as East 34th Street and the like (R. 7-8, 14, 30) in the middle of the day (R. 34-5), the photographic evidence completely negatives any theory of congestion being caused by the display; see Ex. 3-8, R. 91-6. The vehicles of appellants placarded with advertising are visibly engaged in their regular routine of taking and making deliveries without any greater or other effect upon the public convenience than the thousands of non-advertising cars, trucks, buses and other vehicles which ply the streets every day and—without any different or other effect than if they had carried permissible "business notices" only instead of the advertising in question.[13] The record contains no evidence whatever that

[13]It is of interest that a careful study of New York City traffic control, submitted to the Mayor October 1 1948 at his request by the Citizens Budget Commission, Inc., in its 40 pages of discussion nowhere mentions incidental vehicular advertising as a

the trucks involved in this appeal occasioned any congestion or impediment to traffic.

The discrimination made by the courts below between the prohibited "advertising" and the permitted "business notices" is unreasonable and arbitrary, as we shall show (p. 24 below). But even an enactment fair on its face, if applied and administered by public authority in a manner which is in itself unreasonable or which fails to accomplish the reasonable objects intended, is to that extent outside the police power. *Yick Wo* v. *Hopkins*, 118 US 356, 373; *Collins* v. *New Hampshire*, 171 US 30; cf. *Kotch* v. *Pilot Commissioners*, 330 US 552, 557. Even the existence of abuse incident to an occupation ordinarily useful is not enough to justify abolition when regulation may suffice.[14]

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hindrance to traffic. Regarding the carriage of goods by appellant Railway Express and others this report says, pp. 33-4: "Roughly two-thirds of the merchandise freight entering and departing from the City of New York is motor carried. In addition, trucks handle practically all intra-city freight movement. Any substantial curtailment of the movement of the trucks into, out of and within the City, as the recent trucking strike demonstrates, immediately threatens the economic life of the community and endangers the lives of its residents.

The vast volume of freight moved daily by motor truck in the City creates a traffic problem of major scope and complexity. Two aspects of this problem, critical in their impact upon congestion in a number of important areas in the municipality are: (1) the great volume of loading and unloading operations conducted on the streets and sidewalks, and (2) the heavy use of main thoroughfares of the City for pick-ups and deliveries by large inter-city trucks and tractor-trailer combinations."

Simple common sense suggests that this problem is in no way affected by the nature of the *publicity on the sides of the trucks.*

[14] *Meyer* v. *Nebraska*, 262 US 390, 403; *Adams* v. *Tanner*, 244 US 590, 594; *Pierce* v. *Society of Sisters*, 268 US 510; *Ribnik* v. *McBride*, 277 US 350; *Brazee* v. *Michigan*, 241 US 340; *Weaver* v. *Palmer Bros.*, 270 US 402.

This principle was applied in *Saia* v. *New York*, 334 US 558, where this Court declared invalid an ordinance of the City of Lockport forbidding the use of sound-amplification devices by which sound is cast directly upon the streets and public places, except with permission of the chief of police, for the exercise of whose discretion no standards were prescribed. A majority of the Court in that case thought that the ordinance violated the constitutional right of free speech. Although four justices dissented in varying degrees having regard to the particular circumstances under which the sound-amplifying device was to be used, the majority said by Mr. Justice Douglas (334 US at 562):

> "The present ordinance would be a dangerous weapon if it were allowed to get a hold on our public life. Noise can be regulated by regulating decibels. The hours and place of public discussion can be controlled. But to allow the police to bar the use of loud-speakers because their use can be abused is like barring radio receivers because they too make a noise. The police need not be given power to deny a man the use of his radio in order to protect a neighbor against sleepless nights. The same is true here."

We recognize that this result followed to some extent from the preferred position to which the Court thought the freedoms of the First Amendment were entitled (334 US at 562). But under the Fourteenth Amendment also appellants' right to pursue a legitimate business or occupation "ordinarily useful", and the right of individual advertisers and the public generally to enjoy the advantages of that business are entitled to protection against the complete prohibition which is attempted here in the name of traffic control. Here even more than in the *Saia* case a flat and outright prohibition has been imposed without even an attempt at regula-

tion. The traffic rule under which appellants have been convicted discloses no effort to control or limit the size, type, color or other qualities of publicity to be carried in vehicular traffic. The construction adopted below simply prohibits advertising of any description whatever while sanctioning business notices of any description whatever. We have called attention (p. 11 above) to the form of regulation which, under municipal ordinance, New York City has applied to types of commercial publicity far more clamorous in their calls upon public attention and much more conducive to traffic congestion than anything which a Railway Express truck could conceivably exhibit on its side walls. No administrative control of that kind has been tried with vehicular advertising in New York City. Instead the rule promulgated by the Police Commissioner on the basis of his authority *over traffic* has been enlarged by interpretation below so as to become outright destruction of a legitimate commercial activity.

The cases relied upon for respondent below do not support the constitutionality of § 124 as thus construed. *General Advertising Co.* v. *Department of Public Works*, 289 Mass. 149, 193 NE 799, appeal dismissed 296 US 543, 297 US 725, involved no question of traffic control, and turned on the fact that Article 50 of the Commonwealth's Constitution as amended in 1918 authorized regulation by statute of advertising on private property. Recognition of the State's control over its own highways (*South Carolina State Highway Department* v. *Barnwell Bros.*, 303 US 177) does not sanction the complete prohibition of an activity thereon which does not in reality impinge on or affect the use of the highways. *Valentine* v. *Chrestensen*, 316 US 52, which respondent cited to the Court of Appeals, dealt with a sanitary regulation (viz. New York City Sanitary Code § 318), not

with a traffic regulation. The provision there in question forbade distribution in the streets of commercial and business advertising matter. The defendant Chrestensen claimed the right to distribute in the city streets a handbill advertising a submarine which he had moored in the East River and was exhibiting for profit. The issue before the Court was whether the conceded right to circulate the protest which defendant had printed on one side of the handbill carried with it the right to distribute advertising in a manner forbidden by the Sanitary Code. The Court held that it did not. No traffic regulation was involved, but only the conceded right of the City to maintain cleanliness in the streets. Here no question of sanitation arises. It is in the guise of traffic control alone that (as the courts below view § 124) the Commissioner has undertaken to prohibit advertising on all vehicles, while sanctioning business notices on all vehicles. This prohibition we say, entirely apart from the discrimination involved, has no reasonable relation to his use of the delegated power.

The courts below would not, we believe, have come to this unconstitutional construction of § 124 were it not for the previous decision of this Court in *Fifth Avenue Coach Company* v. *City of New York*, 221 US 467 (1911), affirming 194 NY 19 (1909), which was erroneously urged upon the lower courts as controlling them. The *Fifth Avenue Coach* case was a suit in equity to enjoin enforcement of a *municipal ordinance* (not a traffic regulation promulgated by an administrative official) containing substantially the same language as Traffic Regulations § 124.[15] Hence there was

[15]The text of the ordinance is set forth in the opinion of this Court, 221 US at 477. Comparison of § 124, p. 2 above, will show that in its present form the provision has been slightly modified. The courts below, however, in their construction of the language attached no significance to the change.

at no time involved the question now first presented whether the complete prohibition of vehicular advertising or the attempted discrimination between such advertising and business notices, is a lawful and proper exercise of that power of traffic control upon which alone § 124 can rest and by which it is limited. A prohibition which was previously sustained by this Court as the proper exercise of the legislative authority of the City over street advertising (221 US at 484), must now rest upon the relationship of the Police Commissioner's edict to traffic control.[16]

Moreover, the corporate plaintiff in the *Fifth Avenue Coach* case was held by the State courts, in a manner deemed conclusive here (221 US at 481-2), not to have power under its charter to carry the advertising prohibited by the ordinance. That was in reality the end of the question for the purposes of this Court (221 US at 482, 483):

> "And this, we think, is enough for the decision of the case. . . . Necessarily, if plaintiff had no right under its charter to use its stages for advertising purposes, or if the ordinance of the city was a proper exercise of the police power, plaintiff was not deprived of its property without due process of law, which is the basis of its second contention."[17]

That the *Fifth Avenue Coach* case did not involve the validity of a traffic regulation as such, is again made clear by the fact that at the time of that decision there was in

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[16]The Court of Appeals found specific authority for the municipal ordinance in § 50 of the City Charter then in force (194 NY at 27-8). This authorized the board of aldermen "to regulate the exhibition of advertisements". The ordinance previously sustained by this Court was a local advertising law, not a local traffic law, much less an administrative regulation.

[17]These were the grounds upon which dismissal of the suit was based in the lower New York courts. 58 Misc. 401, 403, 411, 429; 126 AD 657.

force in New York State the Motor Vehicle Law, L. 1904 ch. 538, which repealed all municipal traffic ordinances and gave the State exclusive power to pass traffic laws, except that municipalities might regulate the speed of motor vehicles and might also regulate motor vehicles offered to the public for hire. The situation is described in *City of Buffalo* v. *Lewis*, 192 NY 193, 199, decided by the same bench that decided the *Fifth Avenue Coach* case; Judge Chase wrote both opinions. Aside from every other distinction between the *Fifth Avenue Coach* case and this, the vehicular advertising there affected by the ordinance and denied protection in equity ran along the most fashionable and perhaps the most frequented avenue in Manhattan (see 58 Misc. at 409-10), whereas the traffic regulation applied to the present appellants strikes down vehicular advertising on every street and avenue of the five boroughs.

Limited as it is by the radically different record and statutory scheme which the *Fifth Avenue Coach* case presented, the opinion of this Court rendered therein in 1911 has no real bearing upon the present appeal, although it was urged by respondent upon the courts below as conclusive. The majority in the Court of Appeals apparently did not so regard it, since they did not even so much as cite the case as authority for their affirmance without opinion.

If there were a similarity between the cases, however, the change in circumstances since 1911 has been so great as to warrant a reconsideration by this Court of the principles involved. A prohibitive restriction on motor vehicle advertising thought to be reasonable in 1911, may very well be unreasonable today. At the time of the decision of the New York courts in the *Fifth Avenue Coach* case, motor vehicles were a novelty (*City of Buffalo* v. *Lewis*,

192 NY 193, 199). The stages of the Fifth Avenue Coach Company were drawn by horses up to 1907 (194 NY at 26). In 1909, when the Court of Appeals decided the *Fifth Avenue Coach* case, the total motor vehicle production in the United States was only 127,731 units. Motor trucks were at that time unknown, and as late as 1911 only 10,681 motor trucks were produced in the United States.[18] Commercial truck production did not arise in any volume until almost a decade after the *Fifth Avenue Coach* decision. At the time of that decision automotive advertising in its present form and ubiquitousness was hardly dreamed of; the advertisements and notices which are today an accepted detail of motor vehicles did not until well after the *Fifth Avenue Coach* decision acquire the volume and importance of a new industry.[19]

The highest courts of many of the States have stricken down as a denial of due process statutory provisions which prohibit where regulation might suffice. *People* v. *Thillens*, 400 Ill. 224, 79 NE 2d 609 (1948; Illinois Community Currency Exchange Act held unconstitutional as applied to operation of a fleet of armored trucks); *City of Mt. Sterling* v. *Donaldson Baking Co.*, 287 Ky. 781, 155 SW 2d 237 (1941; ordinance forbidding solicitors, peddlers, etc. to approach private residences held an improper exercise of police power); *Little* v. *Smith*, 124 Kan. 237, 257 Pac. 959 (1927; statute prohibiting newspaper advertising of cigarettes held improper exercise of police power); *Carolene Products Co.* v. *Thomson*, 276 Mich. 172, 267 NW 608 (1936; statute prohibiting addition to milk of fat or

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[18]Encyclopedia Britannica, 14th ed. vol. 15 p. 881.

[19]In 1945 the advertising contracts here involved were estimated to be worth $360,000 a year to Railway Express Agency, Inc. (R. 106).

oil other than milk fat held unconstitutional as applied); *Regal Oil Co.* v. *State*, 123 NJL 456, 10 A 2d 495 (1939; statute prohibiting certain signs for public display by retail motor fuel dealers held invalid exercise of police power); *O'Mealia Outdoor Advertising Co.* v. *Borough of Rutherford*, 128 NJL 587, 27 A 2d 863 (1942; ordinance prohibiting outdoor billboard advertising held abuse of police power; *Balesh* v. *City of Hot Springs*, 173 Ark 661, 293 SW 14 (1927; ordinance prohibiting sales at auction held invalid); *Inglis* v. *Rymer*, 113 Fla. 732, 152 So. 4 (1934; city ordinance prohibiting skating rink where fee is charged held abuse of police power); *Prior* v. *White*, 132 Fla. 1, 180 So. 347 (1938; ordinance prohibiting solicitation of orders for goods on private property held outside police power).

The precise point presented to this Court came before the Supreme Court of Nebraska in *State* v. *Hind*, 143 Neb. 479, 10 NW 2d 258 (1943), involving an ordinance of the City of Lincoln substantially identical with Traffic Regulations § 124. Defendant was driving his automobile upon the city streets in the ordinary course of his business, but carried on the outside of his car notices advertising the time and place of a religious meeting. The Nebraska court thus described the ordinance (143 Neb. at 480):

> "It is evident that this ordinance was intended as a traffic control measure. Its purpose is to prohibit the use of the streets of the city to those engaged primarily in advertising activities. The city clearly has the right by ordinance to prescribe reasonable regulations for the control of traffic on its streets as a matter of public safety. In so doing, we think it can properly prohibit vehicles engaged primarily in advertising schemes from driving up and down its

streets and thereby adding to the traffic load and the danger of injury to the public."

The court went on to say on the facts that the defendant's advertising was incidental to the use of the car, which was "no different than that of a business car carrying the advertising of its owner", and indicated as follows the limitations placed upon its interpretation by constitutional requirements (143 Neb. at 481):

> "It will be noted that the ordinance also provides that the use of business notices upon ordinary business vehicles is not prohibited so long as the vehicle is used in the usual business or regular work of the owner. It is evident, therefore, that where the use of the vehicle as an advertising medium was incidental to its ordinary use by its owner, and did not, because of such use as an advertising medium increase traffic or the hazards of the public in the use of the streets, no prohibition was intended. *The ordinance, thus interpreted, is not arbitrary nor unreasonable, and constitutes a valid exercise of the police power by the municipal authority.*" (italics supplied)

It is the constitutional limitation so indicated by the Nebraska court which the majority in the New York court disregarded. The construction of § 124 adopted below violates the principle that an exercise of police power, to be valid, must be reasonably calculated to achieve a legitimate public purpose—in this instance traffic control. If a regulation "purporting to be enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects . . . it is the duty of the courts to so adjudge." *Mugler* v. *Kansas*, 123 US 623, 661; *Liggett Company* v. *Baldridge*, 278 US 105, 113.

2. *Equal Protection of the Laws.* Furthermore the classification made by the lower courts between "advertising" and "business notices" is arbitrary and unreasonable, and denies equal protection of the laws. Traffic Regulations § 124 contains no standards for differentiating between the permitted business notices and the prohibited advertising. In standard usage there is no difference between the ideas. Webster's New International Dictionary (1939 ed.) defines *advertise* in terms of public notice, and defines *advertising*:

> "Any form of public announcement intended to aid directly or indirectly in the sale of a commodity, etc., in the promulgation of a doctrine or idea, in securing attendance, as at a meeting, or the like."

In the absence of a clear distinction in § 124 between the permitted publicity and the forbidden publicity, it might as a criminal enactment be void for uncertainty (*Winters* v. *New York*, 333 US 507) were it not for the construction furnished by the courts below to the effect that publicity concerning one's own business is permitted and publicity concerning the business of others is forbidden.[20]

But this distinction is meaningless in relation to the basic problem of traffic control. The Court will take judicial notice[21] that displays advertising the business of truck own-

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[20]The courts below seem to have felt bound by the construction of the somewhat similar language in the prior ordinance, which the Court of Appeals adopted in the *Fifth Avenue Coach* case, 194 NY at 26-7: "The second sentence of the ordinance is a part of the same paragraph and the two sentences read together show the intention of the legislative body. . . . General advertising for hire is by the ordinance prohibited whether carried on wagons wholly used for advertising or in connection with the ordinary or usual business in which the wagons are engaged."

[21]*Ah Kow* v. *Nunan*, 5 Sawy. 552; *Brown* v. *Piper*, 91 US 37.

ers (*i.e.* "business notices") are just as large, bold and lurid as any commercial advertising. Coca-Cola trucks delivering the syrup may advertise the business of the owner with the brightly painted slogan "Drink Cola-Cola". The New York World-Telegram may carry on the side of its news trucks a poster similar in every way to a Railway Express poster with a picture of Kay Summersby and the title of her serial story "Eisenhower Was My Boss" in gigantic capitals, provided the whole is underwritten with the name of the newspaper owner. At the moment the New York Post displays on its delivery trucks a large poster calling attention to a writer in that newspaper, with the legend in enormous letters:

> "Sylvia Porter says . . .
> SULPHA DRUGS HAVE NOT YET
> BEEN DEVELOPED FOR ECONOMIC
> ILLS"

This forsooth is a "business notice", in the view of the Police Commissioner which has received approval below.

The self-advertising permitted by the interpretation of § 124 which strikes down the advertising of appellants goes very much further. The Court may judicially notice the delivery vehicles which attract attention by their design. Thus Borden's sometimes delivers its milk in white trucks shaped like milk-bottles inscribed "Borden's Golden Crest". A roving replica on wheels of one of the cottage-like "Chock Full O'Nuts" shops reminds the man in the street to drop in for a pound of pistachios. A package of Life-Savers on wheels delivers that confection and also advertises its merits.

There is no conceivable distinction for traffic purposes between a Railway Express truck advertising Camel cig-

arettes and a National Biscuit Company truck urging the public by pictorial representations and slogans painted on its sides, to eat Uneeda Biscuits. There is no distinction, for that matter, between a Railway Express truck advertising radio station WOR (like that described in one of the underlying summonses, R. 95) and the same truck displaying a poster of the same size "Ship by Railway Express". Yet the latter is permissible under the interpretation below as a business notice, while the former is forbidden as advertising.

It is impossible to justify the discrimination thus made between self-advertising and the advertising of others, in relation to the Railway Express delivery trucks, on the theory that advertising for hire brings in an additional commercial incentive which may tend to increase the number of delivery vehicles and vehicular advertisements on the streets. No such explanation could stand upon the present record, which shows conclusively (p. 3 above) that the number of trucks operated by appellants and the delivery routes are determined wholly by the requirements of the freight carried and not in any respect by the incidental advertising displays.

Hence the classification attempted by § 124 as construed below is entirely unreasonable. It treats with an inequality not justified by the avowed purpose of § 124, viz. traffic control, self-advertising and the advertising of products of others. *Central Lumber Co.* v. *South Dakota*, 226 US 157, does not, as one of the courts below erroneously asserted,[22] sustain a distinction, for purposes of control of vehicular traffic, between general advertising for profit and business notices. The *Central Lumber Company* case

[22]The Appellate Part of Special Sessions, 67 NYS 2d at 736.

involved a South Dakota statute which dealt equally with the entirety of the class in relation to the object sought to be obtained, i.e. prohibition of discriminatory sale prices. Section 124 as interpreted does not deal equally with the entire class of publicity displayed by vehicular traffic; it has been interpreted in such a manner as to eliminate paid advertising only. As such it is unreasonably discriminatory in relation to the problem of traffic control with which the Police Commissioner purported to deal in promulgating § 124, and is therefore void.[23]

We see no difference in principle and little in point of fact between § 124 and the statute declared invalid in *Smith* v. *Cahoon*, 283 U S 553, which required those who operated on the highways in the transportation of goods for hire to furnish a bond or insurance policy for the protection of the public against injuries through negligence in such operation, but which did not apply to those "engaged exclusively in the transporting of agricultural, horticultural, dairy or other farm products and fresh and salt fish and oysters and shrimp from the point of production to the assembling or shipping point en route to primary market, or to motor vehicles used exclusively in transporting or delivering dairy products." The following language of the Court in the *Cahoon* case is equally in point here (p. 567):

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[23] *Royster Guano Company* v. *Virginia*, 253 US 412; *Power Manufacturing Co.* v. *Saunders*, 274 US 490, 493; *Louisville Gas & Elec. Co.* v. *Coleman*, 277 US 32, 37-38; *Smith* v. *Cahoon*, 283 US 553, 556, 557; *Iowa-DesMoines Nat. Bank* v. *Bennett*, 284 US 239; *Borden's Co.* v. *Baldwin*, 293 US 194, 210; *Nashville C. & St. L. Ry.* v. *Walters*, 294 US 405, 429, 432; *Mayflower Farms* v. *Ten Eyck*, 297 US 266; *Hartford Co.* v. *Harrison*, 301 US 459, 461, 462.

> "So far as the statute was designed to safeguard the public with respect to the use of the highways, we think that the discrimination it makes between the private carriers which are relieved of the necessity of obtaining certificates and giving security and a carrier such as the appellant, was wholly arbitrary and constituted a violation of the appellant's constitutional right. 'Such a classification is not based on anything having relation to the purpose for which it is made'."[24]

Point II

SECTION 124, AS CONSTRUED AND APPLIED BELOW, IS A DIRECT AND UNDUE BURDEN ON INTERSTATE COMMERCE IN VIOLATION OF ARTICLE I, SECTION 8 OF THE CONSTITUTION.

It will not be disputed that Railway Express and the trucks which it operates, including those in the City of New York, are engaged in the delivery of goods in interstate commerce. *People* v. *Horton Motor Lines,* 281 NY 196 (1939). The advertisements are displayed in performance of a nation-wide contract involving interstate transportation and publication, and thus constitute an interstate advertising enterprise. *Adams Express Co.* v. *New York,* 232 US 14.

By force of § 124 the Police Commissioner is attempting in effect to compel Railway Express to abandon, in the City of New York, the display of advertising on its motor vehicles engaged in interstate commerce as a condition to conducting, in that city, its interstate business of expressage of goods. And this regulation applies only to the New York operation of Railway Express. In the State of Nebraska

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[24] *Smith* v. *Cahoon* was cited with approval by this Court as recently as *Winters* v. *New York,* 333 US at 516 (1948).

substantially the same language in the form of a municipal ordinance is held, partly on constitutional grounds, not to extend to the incidental display of advertising. *State* v. *Hind*, 143 Neb. 479, 10 NW 2d 258. In the City of Hartford, Connecticut, substantially the same language in Hartford ordinances subsection 19-21(a) is held not to govern the display of advertising by Railway Express in the manner shown by this record. *State of Connecticut* v. *Henry Cody and Samuel Chesney*, Hartford (Conn.) Police Court, May 28 1946 (unreported).

A so-called local "traffic regulation" having this far-reaching prohibitive incidence on interstate commerce, is clearly violative of Article I § 8 of the Constitution. For, if this absolute prohibition may accurately be called a "burden" merely, then here the burden is direct and extreme in its destructive effect. Since the regulation is not an appropriate exercise of the local police power, the lack of justification for its direct prohibitory effect on interstate commerce is complete.

But even if there were a real and substantial relation between § 124 and traffic control, and even if it were a reasonable intra-state traffic control measure, the resultant impact on subjects and instrumentalities of interstate commerce invalidates it. While exertion of the police power essential for the protection of the local community may extend incidentally to the operations of interstate commerce, the police power does not justify the imposition of direct burdens on interstate commerce nor its subjection to unreasonable demands.[25]

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[25] *Smith* v. *Alabama*, 124 U. S. 465; *N. Y., N. H. & H. R. Co.* v. *New York*, 165 U. S. 628; *Lake Shore & M. S. Ry. Co.* v. *Ohio*, 173 U. S. 285; *Seaboard Air Line Ry.* v. *Blackwell*, 244 U. S. 310; *Southern Pacific Ry.* v. *Arizona*, 325 U. S. 761; *Morgan* v. *Commonwealth of Virginia*, 328 U. S. 373.

As the late Justice Hughes said in *Adams Express Co.* v. *New York*, 232 US 14, 31:

> "Local police regulations cannot go so far as to deny the right to engage in interstate commerce or to treat it as a local privilege and prohibit its exercise in the absence of a local license."

In the *Adams Express* case, the Court declared invalid an ordinance of the City of New York requiring a license for the operation within the city of express delivery wagons employed in interstate commerce. Attempt was made to sustain the law as a safety precaution appropriately taken under the police power. The Court did not hold that, in its intra-state effects, the ordinance was arbitrary or capricious, but based the declaration of unconstitutionality upon the prohibitive effect of the license requirement on interstate commerce. We perceive no substantial difference between the exaction by a municipal legislature of a license as a condition to operating in interstate commerce within a city, and a policeman's edict that one may not engage, inside the municipality, in the interstate carriage of goods unless he also discontinues, inside the city limits, the interstate business of vehicular advertising.

This case falls within the rule of the decision in *Southern Pacific Co.* v. *Arizona*, 325 US 761, invalidating as an undue burden on interstate commerce an Arizona statute making it unlawful to operate within the State a passenger train of more than 14, or a freight train of more than 70, cars. The regulation, as the Court found, had a serious adverse effect on transportation efficiency and economy, and at the same time it did not appear that the enactment would lessen materially the danger of accidents within the State.

The late Chief Justice Stone said for the majority of the Court (325 US at 767):

> "But ever since Gibbons v. Ogden, 9 Wheat. 1, the states have not been deemed to have authority to impede substantially the free flow of commerce from state to state, or to regulate those phases of the national commerce which, because of the need of national uniformity, demand that their regulation, if any, be prescribed by a single authority."

Following the *Southern Pacific* case, the Court in *Morgan* v. *Commonwealth of Virginia*, 328 U. S. 373, held unconstitutional as an undue burden on interstate commerce a Virginia statute requiring all passenger motor carriers, both interstate and intra-state, to separate white from colored passengers so that contiguous seats would not be occupied by persons of different color at the same time. Congress had not legislated with respect to the racial segregation of passengers on motor vehicles in interstate commerce, and the question was presented how far local authority may exercise its police power over a subject of interstate commerce in the absence of Federal regulation.

After stating the general proposition that "where Congress has not acted, state legislation is . . . invalid which materially affects interstate commerce," the majority of the Court said (328 US at 377):

> "The precise degree of a permissible restriction on state power cannot be fixed generally or indeed not even for one kind of state legislation, such as taxation or health or safety. There is a recognized abstract principle, however, that may be taken as a postulate for testing whether particular state legislation in the absence of action by Congress is beyond

state power. This is that the state legislation is invalid if it unduly burdens that commerce in matters where uniformity is necessary—necessary in the constitutional sense of useful in accomplishing a permitted purpose. Where uniformity is essential for the functioning of commerce, a state may not interpose its local regulation."

Applying these principles to the Virginia statute, the majority opinion continued (328 US at 386):

"As no state law can reach beyond its own border nor bar transportation of passengers across its boundaries, diverse seating requirements for the races in interstate journeys result. As there is no federal act dealing with the separation of races in interstate transportation, we must decide the validity of this Virginia statute on the challenge that it interferes with commerce, as a matter of balance between the exercise of the local police power and the need for national uniformity in the regulation, for interstate travel. It seems clear to us that seating arrangements for the different races in interstate motor travel require a single, uniform rule to promote and protect national travel."

Concurring opinions cited as controlling *Hall* v. *De Cuir*, 95 US 485. Justice Black cited that case as holding that uniformity in the regulations by which a carrier is to be governed "from one end to the other of his route is a necessity in his business", and that it is the responsibility of Congress, not the States, to determine "what such regulations shall be". 328 US at 388.

Under the rule of the *Southern Pacific* and *Morgan* decisions the instant case presents an enactment plainly outside the local police power. If this "traffic regulation" may

legally be made by a municipal police commissioner, certainly statutes of like tenor may be constitutionally passed by every State legislature in the land. The net result would be the imposition of a State-created but nation-wide restraint upon the right to conduct interstate commerce—a condition which, unless complied with, would in effect destroy the right to carry goods interstate by railway express, and which, if complied with, would abolish altogether the right to advertise by interstate vehicular display. This is not therefore a case where determination of the validity of the local law involves a delicate balancing of national against local interests. For the local regulation is such that, as against it, the national interest cannot survive.

But we need not go so far as to assume the adoption by all the States and all their municipalities of similar prohibitive "traffic regulations". The supposition that only some of them might do so is enough to condemn such legislation. In that event, the movement of the corporate appellant's trucks from State to State and from city to city would be seriously impeded, involving the removal of the advertisements upon entering a State or municipality having such legislation and their restoration upon entering one not so legislating. There would thus become applicable the reasoning which the Court employed in the *Southern Pacific* case (325 US at 773):

> "Enforcement of the law in Arizona, while train lengths remain unregulated or are regulated by varying standards in other states, must inevitably result in an impairment of uniformity of efficient railroad operation because the railroads are subjected to regulation which is not uniform in its application. Compliance with a state statute limiting train lengths requires interstate trains of a length lawful in other

> states to be broken up and reconstituted as they enter each state according as it may impose varying limitations upon train lengths. The alternative is for the carrier to conform to the lowest train limit restriction of any of the states through which its trains pass, whose laws thus control the carriers' operations both within and without the regulating state . . . With such laws in force in states which are interspersed with those having no limit on train lengths, the confusion and difficulty with which interstate operations would be burdened under the varied system of state regulation and the unsatisfied need for uniformity in such regulation, if any, are evident."

Consequently, it is evident that if vehicular display advertising by an interstate carrier is to be prohibited or regulated, the prohibition will have to be universal or the regulation will have to be uniform, and either result will have to flow from Congressional action.

In the *Southern Pacific* case, the Court found that the practical effects of the statute were such as to interpose "a substantial obstruction to the national policy proclaimed by Congress, to promote adequate, economical and efficient railway transportation service. Interstate Commerce Act, preceding § 1, 54 Stat. 889." 325 US at 773. A similar policy with respect to interstate motor vehicle transportation has been declared by Congress in the Motor Carrier Act.[26] And this Court has noted that in that legislation "Congress sought to set out its purpose and the range of its action in a declaration of policy which covered the preservation and fostering of motor transportation in the public interest, tariffs, the coordination of motor carriage

[26]Title 49 U. S. C. A. §§ 301-327.

with other forms of transportation and cooperation with the several states in their efforts to systematize the industry"; and "efficient and economical movement in interstate commerce is obviously a major objective of the Act."[27]

New York Traffic Regulations § 124 constitutes a substantial obstruction to the policy thus declared. Many of the trucks of Railway Express, in their carriage of goods and advertising in interstate commerce, run constantly in and out of New York State to and from the four railheads in the State of New Jersey (R. 48). None of them is confined in its operations to New York City or New York State. All of them, as the demands of freight require, traverse the highways of New York and other States, and in the process necessarily pass through various cities, towns and villages. Eighty percent. of the merchandise carried by the corporate appellant in the 1,900 trucks here immediately involved moves in interstate commerce (R. 83).

The contract under which they display advertising is nation-wide and calls for such display in various parts of the country (R. 106). If the Police Commissioner of the City of New York may prohibit such advertising under penalty of closing the highways within that city to the trucks, then every city, town and village in the United States, through either its legislature or its lesser administrative officials, may do likewise. Railway Express would then have to abandon its interstate vehicular advertising altogether, and could continue that advertising only if a sufficient number of local communities elected not to bar the posters from the trucks. Even then, Railway Express would be confronted

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[27] *United States* v. *American Trucking Assns.*, 310 U. S. 534 (1940); and see *Maurer* v. *Hamilton*, 309 U. S. 598, 606 (1940); *Motor Carrier Act*, § 202, 49 U. S. C. A. § 302.

with the necessity of equipping its vehicles with adjustable advertising sides, to be put on or taken off as local laws might require, and to supply its drivers with detailed information as to the state of the law in all the cities, villages, towns and hamlets along the interstate routes.

Such arrangements, of course, would be a practical impossibility. As a consequence, and by compulsion of purely local "traffic regulations", such interstate advertising would have to be abandoned altogether, and an interstate business, legitimate outside the prohibiting localities, would nevertheless be completely destroyed.

It is submitted that a local regulation having such far-flung extra-territorial consequences is not a permissible traffic rule, but is legislation which flies in the face of declared Congressional policy with respect to the "efficient and economical movement in interstate commerce" of motor vehicle transportation.

As § 124 constitutes a "substantial obstruction" to the policy thus declared, it may not be permitted to stand in the way of that policy. *Southern Pacific Co.* v. *Arizona*, 325 US 761. The Court is here presented, not with a local safety regulation, like the limitation of weight and width of motor trucks involved in *South Carolina Highway Department* v. *Barnwell Bros.*, 303 US 177 (note like instances cited, 303 US at 189), but with a prohibition of vehicular advertising logically and realistically unrelated to the control of local traffic which is its only foundation.

CONCLUSION

The judgments of conviction should be reversed and the summonses dismissed.

Respectfully submitted,

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New York, N. Y., November 16 1948

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Supreme Court of the United States

OCTOBER TERM, 1948

No. 51

RAILWAY EXPRESS AGENCY, INC., CHARLES GERCHARIO, MICHAEL LONG, et al.,

Appellants,

against

PEOPLE OF THE STATE OF NEW YORK.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

APPELLEE'S BRIEF

November 26, 1948.

JOHN P. McGRATH,
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Attorney for Appellee.

SEYMOUR B. QUEL,
STANLEY BUCHSBAUM,
of Counsel.

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Supreme Court of the United States

OCTOBER TERM, 1948

No. 51

RAILWAY EXPRESS AGENCY, INC., CHARLES GERCHARIO, MICHAEL LONG, et al.,

Appellants,

against

PEOPLE OF THE STATE OF NEW YORK.

APPELLEE'S BRIEF

Statement

This is an appeal from a final judgment of the New York Court of Appeals (R. 107-110; 297 N. Y. 703, 77 N. E. 2d 13) affirming judgments of the Appellate Part of the Court of Special Sessions of the City of New York (R. 79-82; 188 Misc. 342, 67 N. Y. S. 2d 732) which affirmed judgments of the New York City Magistrates' Court convicting the appellants of operating or causing to be operated advertising vehicles on the streets of the City of New York (R. 6-32; Traffic Regulations of the City of New York, Art. 9, § 124). This appeal was allowed by the Chief Judge of the Court of Appeals (R. 121-122). On June 21, 1948, this Court noted probable jurisdiction (R. 141).

Facts

The facts may be summarized briefly. In both cases trucks of the Railway Express Agency, while carrying merchandise in the regular course of the company's delivery business, bore advertising signs on their outer sides (R. 39-42, 72-74, 91-96). These consisted of posters or placards four feet square or larger which advertised, among other things, Camel cigarettes, Ringling Brothers and Barnum & Bailey Circus, radio station WOR, Prince Albert Smoking Tobacco, and various motion pictures (R. 40-42, 72,74, 91-96). These signs are portrayed in the exhibits at pages 91 to 96 of the Record, but the photographs do not show the attractive colors of the actual advertisements (R. 42).

The appellants other than Railway Express Agency were employees of that company and were engaged in their employment as drivers of trucks when they were served with summonses for violating Traffic Regulation § 124 (R. 72-73).

The Railway Express Agency operates approximately 1900 trucks in New York City (R. 52-54). These trucks do not leave New York City except to go to rail heads at Communipaw, Erie, Lackawanna and West Shore on the New Jersey side of the Hudson River (R. 48, 54).

The advertising signs are carried on the trucks pursuant to a contract with the Douglas Leigh advertising company (R. 61-63, 106).

Traffic Regulation Involved

The Traffic Regulation involved was adopted by the Police Commissioner under the authority granted to him by Section 435 of the New York City Charter. The Charter provision, in so far as pertinent, reads as follows:

"The police department and force shall have the power and it shall be their duty to * * * regulate, direct, control and restrict the movement of vehicular and pedestrian traffic for the facilitation of traffic and the convenience of the public as well as the proper protection of human life and health; * * * The commissioner shall make such rules and regulations for the conduct of pedestrian and vehicular traffic in the use of the public streets, square and avenues as he may deem necessary * * *."

The Traffic Regulation reads:

"**§ 124. Advertising vehicles.**

No person shall operate, or cause to be operated, in or upon any street an advertising vehicle; provided that nothing herein contained shall prevent the putting of business notices upon business delivery vehicles, so long as such vehicles are engaged in the usual business or regular work of the owner and not used merely or mainly for advertising."

Background of the Regulation

Traffic Regulation § 124 stems from an ordinance originally enacted in 1882 and is the same as that ordinance except for slight and unimportant revisions. The ordinance continued in effect until the end of the year 1937. At that time the statute enacting the Administrative Code of the City of New York repealed this ordinance along with many other ordinances and statutes.

In accordance with the recommendations of the codifiers who prepared the Administrative Code this section, together with all but one of the other traffic regulations contained in the Code of Ordinances, was not re-enacted, but they were immediately adopted as Traffic Regulations by the Police Commissioner of the City of New York pursuant to the authority granted him by § 435 of the New York City Charter.

Opinions Below

The Court of Appeals affirmed without opinion aside from a dissent of one sentence by three judges (R. 107-108). Its memorandum of affirmance is reported in 297 N. Y. 703 (1947).

The Appellate Part of Special Sessions, in affirming the convictions, wrote a *Per Curiam* opinion (R. 82-85). It pointed out that the meaning of the Traffic Regulation involved was governed by *Fifth Avenue Coach Co.* v. *City of New York*, 194 N. Y. 19 (1909) and stated that the Police Commissioner had the power to adopt the Regulation since the New York City Charter gives him power to regulate matters relating to traffic control. The Court said (R. 85):

> "It cannot be doubted that advertising on vehicles daily using the streets of the city do constitute a distraction to vehicle drivers as well as the pedestrian public and do affect the safety of the public in the use of the streets."

This opinion is reported in 188 Misc. 342 (1947).

Issues

Three issues are raised by this appeal:

1. Is a traffic regulation prohibiting the operation of advertising vehicles on the streets of the City of New York, in so far as it is applicable to vehicles not used merely for that purpose, so lacking in reasonable justification as to violate the due process clause of the Fourteenth Amendment?

2. Does a provision in such a traffic regulation exempting from its application vehicles bearing "business notices" of the owner so long as such vehicles are engaged

in the usual business or regular work of the owner, involve a classification so lacking in reasonable justification as to violate the equal protection of the laws clause of the Fourteenth Amendment?

3. Does the application of such a traffic regulation to trucks engaged in interstate commerce impose such a burden on interstate commerce as to violate the commerce clause of the Constitution?

Summary of Argument

In the case of *Fifth Avenue Coach Co.* v. *City of New York*, 221 U. S. 467 (1911), this Court sustained the constitutionality of a predecessor ordinance to the present Traffic Regulation. All the constitutional issues now raised, aside from the commerce clause issue, were passed on in that case.

1. Entirely aside from the precedent of the *Fifth Avenue Coach* case, it is beyond dispute that a State (or a City or an appropriate public officer to whom the State's power has been delegated) may enact legislation reasonably designed to prevent traffic accidents or traffic congestion. A conclusion that advertising signs on the sides of vehicles are likely to distract pedestrians or motorists and divert their attention from vehicular traffic so as to cause or create danger of causing traffic accidents in the congested traffic of a city such as New York, cannot be said to be without reasonable basis.

Advertising signs are designed to attract and divert attention. Unless the view of advertisers that advertising signs accomplish this purpose is entirely lacking in reason, the Traffic Regulation involved rests upon sound grounds for the exercise of the police power. Clearly, advertising signs on the sides of trucks divert attention, and the conclusion that such diversion of attention in the concen-

trated traffic of New York City creates danger of accidents has, particularly when the conclusion is reached by one expert in traffic matters, a reasonable basis.

2. The exception in the Traffic Regulation for business notices of the owner of the vehicle does not result in a denial of the equal protection of the laws. It is based upon a reasonable classification. Many regulations, including regulations of billboards and the usage of highways, contain exceptions relating to the business of the owner. Owners of vehicles generally do not advertise their business on the sides of their vehicles. Moreover, it is doubtful whether the exception for "business notices" will be construed to permit the use of a regular advertising sign as contrasted with a mere statement of name, address, and nature of business.

3. Traffic safety regulations of states and municipalities do not violate the commerce clause merely because they are applicable to interstate vehicles along with all others. A regulation against the use of advertising signs on vehicles does not, particularly in its application to trucks that are confined to New York City except for trips to rail heads on the New Jersey side of the Hudson River, impose an improper burden on interstate commerce.

POINT I

A regulation barring the use of advertising signs on the outer sides of vehicles plying the streets of New York City is designed to promote public safety and is a valid exercise of the police power.

(1)

At the outset we wish to point out that the appellants have failed to establish a basis for invoking the due process clause in that neither life nor liberty nor property is taken

away by the traffic regulation under attack. Obviously the appellants' claim is that they are being deprived of their property without due process of law. Analysis reveals, however, that no property right is being infringed.

The regulation limits the opportunity to use public streets or highways to the extent that it forbids the use of the streets to vehicles so long as they carry advertising signs. The primary question then is whether there is a right in the nature of property to use the public highways for the purpose of advertising, whether or not that purpose is the sole reason for the vehicle being on the streets or is merely secondary to other uses in the ordinary course of business.

The basic problem was posed in the case of *Valentine* v. *Chrestensen*, 316 U. S. 52 (1942), where this Court said (pp. 54-55):

> "We are equally clear that the Constitution imposes no such restraint on government as respects purely commercial advertising. Whether, and to what extent, one may promote or pursue a gainful occupation in the streets, to what extent such activity shall be adjudged a derogation of the public right of user, are matters for legislative judgment. The question is not whether the legislative body may interfere with the harmless pursuit of lawful business, but whether it must permit such pursuit by what it deems an undesirable invasion of, or interference with, the full and free use of the highways by the people in fulfilment of the public use to which streets are dedicated."

The Court went on to uphold the municipal ordinance in so far as it banned the distribution of commercial advertising material on the streets.

See also: *Kelbro* v. *Myrick*, 113 Vt. 64, 30 A. 2d 527 (1943).

In *Stephenson* v. *Binford*, 287 U. S. 251 (1932), the law regarding the right to regulate the use of highways was summarized as follows (p. 264):

"It is well established law that the highways of the state are public property; that their primary and preferred use is for private purposes; and that their use for purposes of gain is special and extraordinary, which, generally at least, the legislature may prohibit or condition as it sees fit."

See also: *Packard* v. *Banton*, 264 U. S. 140 (1924); *South Carolina State Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177 (1938); *People* v. *Rosenheimer*, 209 N. Y. 115, 120-121, 102 N. E. 530 (1913); *Gill* v. *City of Dallas*, 209 S. W. 209 (Tex. Civ. App., 1919), app. dism. 252 U. S. 588 (1920).

It has generally been held that a municipality cannot even grant the right to use its streets for advertising purposes. *State ex rel. Belt* v. *St. Louis*, 161 Mo. 371, 61 S. W. 658 (1901); *City of Birmingham* v. *Holt*, 239 Ala. 248, 194 So. 538 (1940); *People ex rel. Healy* v. *Clean Street Co.*, 225 Ill. 470, 80 N. E. 298 (1907); *State ex rel. Beck* v. *City of Hutchinson*, 144 Kan. 700, 62 P. 2d 865 (1936); *Maupin* v. *City of Louisville*, 284 Ky. 195, 144 S. W. 2d 237 (1940).

It would seem indisputable that there is no property right to use the public streets for the purpose of private and commercial advertising. The fact that the advertising use does not add to the number of vehicles plying the streets but is incidental to other and permitted uses, does not transmute it into a property right.

(2)

Assuming, for the purpose of argument, that a property right is involved, the regulation, nevertheless, should be upheld. It constitutes a valid exercise of the police power.

Beyond dispute the police power covers traffic regulation. The due process attack must rest on the contention that a regulation barring the use of advertising signs on the outer sides of vehicles plying the streets of the City of New York is without a rational basis.

Such a regulation, however, is plainly intended to promote traffic safety. Advertising signs are designed to attract attention and to be read. To the extent that they achieve their aim, they distract. The temptation to read an advertising sign on the side of a vehicle is not confined to those on the sidewalks. It may arise in a pedestrian crossing a street or in the driver of another vehicle. In the congested traffic of New York City the diversion of attention, even momentarily, of a motorist from the driving of a vehicle or of a pedestrian from the avoidance of vehicles may lead to an accident. Certainly the conclusion that such advertisements may distract attention and cause accidents does not pass the bounds of reason.

The Courts have recognized that advertising signs may cause traffic hazards. In *Perlmutter* v. *Greene*, 259 N. Y. 327, 331, 333-334; 182 N. E. 5 (1932), it was held that the State may screen off the view of billboard advertising signs at dangerous curves in roads where such signs might distract the attention of automobile drivers. In *General Outdoor Advertising Co.* v. *Department of Public Works*, 289 Mass. 149, 181, 193 N. E. 799 (1935), app. dism. 296 U. S. 543 (1935), 297 U. S. 725 (1936), the Court, in sustaining the billboard regulations involved, pointed out that the regulations tended to prevent the distraction of the attention of drivers of automobiles and to promote public safety upon the highways.

To the same effect, see: *Hav-A-Tampa Cigar Co.* v. *Johnson*, 149 Fla. 148, 161-162, 5 So. 2d 433, 438 (1941); *Swisher & Son* v. *Johnson*, 149 Fla. 132, 145, 5 So. 2d 441, 446 (1941).*

(3)

A predecessor ordinance to the present traffic regulation was reviewed by this Court in *Fifth Avenue Coach Co.* v. *City of New York*, 221 U. S. 467 (1911). The New

* See, also, the statement of the New York City Planning Commission, quoted *infra* at p. 13.

York Court of Appeals had sustained the validity of the ordinance on the ground that advertising signs on the sides of vehicles might tend to cause crowds to collect and thus interfere with the use of the sidewalks (194 N. Y. at p. 30). This Court apparently adopted the same basis for upholding the ordinance as an exercise of the police power (221 U. S. at pp. 481-483). Even if there were less likelihood that today the signs would distract and thereby create danger of accidents than there was that in 1911 the signs would cause crowds to collect, the more serious results of such a consequence would justify this exercise of the police power.

The appellants' suggestion that the public has become so surfeited with advertising that its power to attract or distract can no longer be said to be a public danger is disingenuous. Unless the Railway Express Agency is obtaining income through its advertising trucks under false pretenses, advertising signs still have power to attract attention.

The public may well be annoyed by advertising, but it still tends to be distracted by it. While the novelty may have worn off, the ability of advertising signs to attract attention is indicated by their widespread use. The dangers of distraction in traffic have been multiplied, not diminished, by the tremendous increase in vehicular traffic.

Our view of the effect of the advertising signs may be clarified by a few theoretical and perhaps exaggerated examples of advertising vehicles. Suppose a truck carried on its sides advertising signs displaying a reproduction of a nude by Rubens, or the scantily-clad female paintings of Petty or Vargas. Suppose a truck carried on its sides an advertising message conveyed by means of electric bulbs which flash off and on, illuminating letters and words, similar to the news flashes on the Times Building in New York City. There can be no doubt that such signs would tend to divert attention and create danger of accidents. Less attractive signs, such as those on the sides of the Railway Express trucks, may not attract attention to the

same degree, but the view that their ability to distract creates danger of accidents in New York City is far from capricious.

The applicability of the Traffic Regulation is not confined to the trucks of the Railway Express Agency. If the Regulation is invalidated, the many other trucking companies in New York City will be enabled to carry advertising signs without restriction as to the nature of the signs.

(4)

To sustain the validity of the Traffic Regulation it is not necessary to submit evidence of accidents that have been caused by the advertising signs. Where underlying questions of fact may determine constitutionality, the presumption of constitutionality prevails in the absence of a factual foundation in the record for overthrowing the law or regulation. *O'Gorman & Young* v. *Hartford Fire Ins. Co.*, 282 U. S. 251, 257-258 (1931); *Williams* v. *Mayor*, 289 U. S. 36, 42 (1933); *Pacific States Box & Basket Co.* v. *White*, 296 U. S. 176, 185-186 (1935); *Sullivan* v. *City of Shreveport*, 251 U. S. 169 (1919).

In *General Outdoor Advertising Co.* v. *Dept. of Public Works*, 289 Mass. 149, 181, 193 N. E. 799, 814 (1935), app. dism. 296 U. S. 543 (1935), 297 U. S. 725 (1936), Chief Justice Rugg said (p. 181):

> "The finding of the master that the rules and regulations tend to prevent such distraction of the attention of drivers of automobiles and to promote public safety upon highways is warranted and must be accepted as true even though no direct testimony was introduced that particular accidents were due to inattention of drivers of automobiles caused by the distracting influence of pictures, embellishments and words on signs or billboards. The view taken by the master may have been convincing on this point. Apart from that, it is almost if not quite a matter of common knowledge that such distraction from that cause with accompanying jeopardy to travellers is liable to

occur. Rules and regulations of advertising devices, even to the extent of prohibition, having a reasonable tendency to prevent obstructions to traffic or to facilitate safety of travel, are permissible."

Similarly, in *Brachey* v. *Maupin*, 277 Ky. 467, 126 S. W. 2d 881 (1939), the Court said (p. 476):

"It is our view that the evidence is clear and convincing that the use of plaintiff's sound truck as equipped and used constitutes a hazard to motorists and pedestrians of the city. It is argued for plaintiff that no accidents have resulted during the many years the sound truck has been in operation on the streets. But this is beside the question. It is not a question of whether or not any accidents or injury to person or property have actually occurred, but whether such is likely to result or be produced."

(5)

The argument advanced by the appellants concerning the advertising signs in the Times Square area in no way tends to prove that vehicles bearing advertising signs do not constitute a traffic hazard or that the regulation in question is lacking in reasonable basis. Assuming that the Times Square signs create a greater traffic danger than those on vehicles, it does not follow that the attempt to eliminate the lesser evil is unconstitutional. Simply because the legislative authorities may have decided that the preservation of the unique and picturesque qualities of "The Great White Way" warrants the additional traffic risks in that limited area, does not prevent them from making every effort to minimize other traffic dangers. Moreover, there are countervailing factors which tend to reduce the danger created by the distracting signs in the Times Square area. Motorists in that area are aware of the situation and drive more slowly and exercise greater caution. In addition to the traffic lights, traffic policemen are stationed at every street corner at night when the illuminated signs are turned on. The police also make

unusual efforts to prevent pedestrians from crossing against the traffic lights in and around Times Square.

Vehicles bearing advertising signs are not rendered "wholly unobjectionable" because in a limited area and for reasons peculiar to this area more distracting signs are permitted. Nor are the objectionable features of vehicular advertising lessened by the fact that advertising by aircraft has not been entirely prohibited. Aside from the fact that the existence of one evil does not immunize another from regulation, there are several possible explanations for the failure of the municipal authorities to take more stringent action with regard to aircraft advertising. The introduction of such advertising is comparatively recent. Its use is infrequent. Finally, action may have been delayed by the difficult legal problem of determining the extent to which a municipality may exercise control over the air space above it, particularly when the aircraft takes off and lands outside the limits of the city or state.

It should be noted that the New York City Planning Commission, in a discussion of the need for billboard regulation in 1939, said (Annual Report, p. 42):

> "Billboards are often a positive menace to life and limb, since they distract the attention of motorists and pedestrians on the highways."

In 1940 the Zoning Resolution of the City of New York was amended to bar the erection of signs in residence districts except for small size, non-illuminated signs indicating the practice on the premises of the profession of the occupant and "for sale" and "for rent" signs; and to limit business and advertising signs in business and retail districts. Zoning Resolution § 3(9). (d), § 4(49). Other limitations on the use of signs in New York City are found in New York City Administrative Code, § B26-7.0.

Insofar as the Times Square argument of the appellant involves a claim of denial of equal protection of the laws, it is answered by the cases cited in Point II of this brief, infra, pp. 16-19.

(6)

Throughout the appellants' brief there are references to the Traffic Regulation as a "prohibition" of paid vehicular advertising, coupled with assertions that, while regulation may be permissible, prohibition is invalid. Basically, this contention rests on semantic quibbling. Essentially we are dealing with a *regulation* of vehicular traffic. Motor vehicles are regulated in that they are not permitted to carry advertising on their sides. Only by treating the advertising as something entirely independent of the normal uses of the vehicles on which the advertisements appear can justification be found for labeling the Regulation a prohibition.

In any event, the validity of the Traffic Regulation does not depend upon whether the descriptive label "prohibition" is more appropriate than the label "regulation". The right to exercise the police power is not determined by a mechanical fitting into verbal categories.

It may well be that prohibition is improper where it is clear that regulation will suffice. Such is not the case here. Prohibition of vehicular advertising is necessary to eliminate the evil. Regulation will, at best, merely reduce it. No matter how regulated, the advertising will still tend to attract attention, for that is the very purpose of advertising; and the Regulation is aimed at the elimination of the danger involved in such attraction. If we were dealing with stationary billboards, a regulation which required them to be placed in positions where they could not be seen by pedestrians while crossing the streets or by drivers of motor vehicles might suffice. Obviously, such a regulation of vehicular advertising is impossible.

(7)

Although the appellants' brief never flatly requests this Court to review the state courts' construction of Traffic Regulation § 124, such a review is implictly suggested by

the many statements that the regulation was intended to apply only to vehicles using the streets solely for advertising purposes. For example, the case of *State* v. *Hind*, 143 Nebr. 479, 10 N. W. 2d 258 (1943), dealing with the statutory construction of a somewhat similar law is repeatedly cited.

In the case at bar and in *Fifth Avenue Coach Co. v. City of New York*, 194 N. Y. 19 (1909), however, the New York courts construed the legislation to be applicable to the appellants' trucks and to other vehicles which carry advertising on their sides, regardless of whether this is merely incidental to normal business operation of the vehicles. It is well established that this Court must accept the State's determination of the meaning of the Traffic Regulation. *Price* v. *Illinois*, 238 U. S. 446, 451 (1915); *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 73 (1911); *Sauer* v. *New York*, 206 U. S. 536, 546 (1907); *Morley* v. *Lake Shore Railway Co.*, 146 U. S. 162, 167 (1892). Cf. *Owensboro Water Works Co.* v. *Owensboro*, 200 U. S. 38, 46-47 (1906); *Wilson* v. *Eureka City*, 173 U. S. 32, 35 (1899).

Equally inappropriate is the appellants' contention that the regulation has no reasonable relation to the powers delegated to the Police Commissioner. The extent to which the State has delegated this police power to a municipality or municipal authorities is a question for the state courts and has been decided by them. That the power to adopt such regulations may be delegated to the Police Commissioner is well settled. *Cherubino* v. *Meenan*, 253 N. Y. 462 (1930); *Lieberman* v. *Van De Carr*, 199 U. S. 552, 560-562 (1905); *Highland Farms Dairy* v. *Agnew*, 300 U. S. 608, 611-612 (1937).

POINT II

An exemption for business notices relating to the business of the vehicle owner in a regulation barring advertising signs on vehicles, does not involve a denial of the equal protection of the laws. It constitutes a valid classification resting on a reasonable basis.

(1)

The contention that the traffic regulation involved violates the equal protection of the laws clause because it contains an exception for business notices of the owner on his vehicles, is without merit.

The arguments advanced concerning the inapplicability of the precedent of *Fifth Avenue Coach Co.* v. *City of New York*, 221 U. S. 467 (1911), as a result of the passage of time and changes in conditions, even if meritorious as to the other aspects of the case, have no application to the equal protection of the laws question. Neither the passage of time nor the changes in conditions have altered the basis for the classification or its reasonableness. In the *Fifth Avenue Coach* case the Court said (pp. 483-484):

> "The third contention is that the ordinance denies plaintiff the equal protection of the laws, and to support the contention it is urged that 'no advertising wagons are allowed in the streets, but "ordinary business wagons" when "engaged in the usual business or work of the owner, and not used merely or mainly for advertising," are permitted to exhibit "business notices."' It is argued that the ordinance 'thus creates a favored sub-class of vehicles which are permitted to display advertisements.' In view of the power of the State and the city acting with the authority of the State, to classify the objects of legislation, we will not discuss the contention. The distinction between business wagons and those used for advertising purposes has a proper relation to the purpose of the ordinance and is not an illegal discrimination."

This is as true today as it was in 1911.

The presumption of constitutionality applies where legislation or a regulation is attacked on the ground that it denies the equal protection of the laws. "A statutory discrimination will not be set aside as the denial of equal protection of the laws if any state of facts reasonably may be conceived to justify it." *Metropolitan Casualty Insurance Co.* v. *Brownell*, 294 U. S. 580, 584 (1935).

The question is simply whether there is a reasonable basis for the classification. If there is, it matters not that other activities which also constitute evils are unaffected by the regulation or exempted from its application. *Woods* v. *Miller Co.*, 333 U. S. 138, 145 (1948); *United States* v. *Carolene Products Co.*, 304 U. S. 144 (1938); *Patsone* v. *Pennsylvania*, 232 U. S. 138, 144 (1914).

In *Central Lumber Co.* v. *South Dakota*, 226 U. S. 157, 160 (1912), Mr. Justice HOLMES speaking for the Court said that a legislature may

> "direct its law against what it deems the evil as it actually exists without covering the whole field of possible abuses, and it may do so none the less that the forbidden act does not differ in kind from those that are allowed."

Classifications which exempt an owner engaged in his own business have generally been sustained. In the analogous situation of restrictions on the use of billboards, exemptions for billboards or signs referring to the business conducted on the property upon which they stand have been upheld. *General Outdoor Advertising Co.* v. *Dept. of Public Works*, 289 Mass. 149, 211-212, 193 N. E. 799, 828 (1935), app. dism. 296 U. S. 543 (1935), 297 U. S. 725 (1936); *Murphy* v. *Town of Westport*, 131 Conn. 292, 40 A. 2d 177 (1944).

Similarly a distinction may be drawn between vehicles of carriers for hire and vehicles used in the ordinary course of the business of their owners. In *Bradley* v.

Public Utility Commissioners of Ohio, 289 U. S. 92 (1933), Mr. Justice BRANDEIS said (p. 97):

> "In dealing with the problem of safety of the highways, as in other problems of motor transportation, the State may adopt measures which favor vehicles used solely in the business of their owners, as distinguished from those which are operated for hire by carriers who use the highways as their place of business."

See also: *Packard* v. *Banton*, 264 U. S. 140, 144 (1924); *Dixie Ohio Express Co.* v. *State Revenue Commission*, 306 U. S. 72, 78-79 (1939).

There are a number of reasonable grounds for distinguishing between vehicles carrying advertising for others and vehicles carrying advertising of the owner. In actual practice owners of trucks rarely place advertising of their own business on the sides of the vehicles. An overwhelming majority of truck owners merely place their name, address and a brief statement of the nature of their business on the sides of their trucks. Moreover, advertisements for businesses other than that of the owner of the vehicle are almost invariably placed on vehicles which are constantly on the streets, such as appellants' trucks.

The appellants ask this Court "to take judicial notice that displays advertising the business of truck owners (i.e. 'business notices') are just as large, bold and lurid as any commercial advertising." As a matter of fact, the number of truck owners who advertise their own business on the sides of their trucks (except to the extent of merely naming the nature of their business) are few, and only a small percentage of this limited group use large, bold and lurid signs. In the courts below the appellants apparently made a studied effort to cite as many examples of such advertising as they could discover and, nevertheless, were able to give only a handful of examples. Contrast this with the 1900 trucks of the appellants in New York City or the numerous busses of the Fifth Avenue Coach Company, and it indicates why the distinction was made.

(3)

Thus far we have discussed the exemption as though it permitted owners to advertise their own business, but there is serious doubt whether the exemption for vehicles engaged in the usual business of the owner relates to advertising of the kind carried by the trucks of the Railway Express Agency. The exemption merely permits the use of "business notices" of the owner. This phrase has never been judicially construed by the New York courts. It may well be held that a "business notice" is confined to the name of the owner, his address, and the nature of his business. That is all that is to be found on most business delivery vehicles in New York City. Undoubtedly there are some which have signs on their sides advertising the business of the owner in a manner akin to that in which the Railway Express Agency advertises the business of others. Whether such advertisements of the owner constitute "business notices" has not yet been determined.

(4)

The appellants' reliance on *Smith* v. *Cahoon*, 283 U. S. 553 (1931) may be answered by a reference to several of the cases in which this Court has distinguished that case, cases involving classifications far more analogous to the classification involved herein. *Continental Baking Co.* v. *Woodring*, 286 U. S. 352, 371-373 (1932); *Hicklin* v. *Coney*, 290 U. S. 169, 173-176 (1933); *Aero Transit Co.* v. *Georgia Public Service Comm'n*, 295 U. S. 285, 292 (1935).

POINT III

A regulation barring the use of advertising signs on all vehicles in New York City does not violate the commerce clause merely because it is applicable to vehicles engaged in interstate commerce as well as to all other vehicles.

(1)

The appellants assert that the regulation of the use of advertising signs on the sides of vehicles using the streets of New York City is a prohibition which, in so far as it is applicable to vehicles in interstate commerce, constitutes an invalid burden on such commerce. It is well established, however, that in the absence of a direct conflict with federal legislation a State (or a city) may adopt legislation designed to promote safety upon its streets and highways which is applicable alike to interstate and local vehicles. In *Morris* v. *Duby*, 274 U. S. 135 (1927), Chief Justice TAFT, speaking for the Court, said (p. 143):

> "In the absence of national legislation especially covering the subject of interstate commerce, the State may rightly prescribe uniform regulations adapted to promote safety upon its highways and the conservation of their use, applicable alike to vehicles moving in interstate commerce and those of its own citizens."

In *South Carolina State Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177 (1938), Mr. Justice, later Chief Justice, STONE said (p. 187):

> "But the present case affords no occasion for saying that the bare possession of power by Congress to regulate the interstate traffic forces the states to conform to standards which Congress might, but has not adopted, or curtails their power to take measures to insure the safety and conservation of their highways which may be applied to like traffic moving intrastate.

> Few subjects of state regulation are so peculiarly of local concern as is the use of state highways. There are few, local regulations of which is so inseparable from a substantial effect on interstate commerce. Unlike the railroads, local highways are built, owned and maintained by the state for its municipal subdivisions. The state has a primary and immediate concern in their safe and economical administration. The present regulations, or any others of like purpose, if they are to accomplish their end, must be applied alike to interstate and intrastate traffic both moving in large volume over the highways."

He went on to say (pp. 189-190):

> "In each of these cases regulation involves a burden on interstate commerce. But so long as the state action does not discriminate, the burden is one which the Constitution permits because it is an inseparable incident of the exercise of a legislative authority, which, under the Constitution, has been left to the states.
>
> "Congress, in the exercise of its plenary power to regulate interstate commerce, may determine whether the burdens imposed on it by state regulation, otherwise permissible, are too great, and may, by legislation designed to secure uniformity or in other respects to protect the national interest in the commerce, curtail to some extent the state's regulatory power. But that is a legislative, not a judicial function, to be performed in the light of the Congressional judgment of what is appropriate regulation of interstate commerce, and the extent to which, in that field, state power and local interests should be required to yield to the national authority and interest. In the absence of such legislation the judicial function, under the commerce clause as well as the Fourteenth Amendment, stops with the inquiry whether the state legislature in adopting regulations such as the present has acted within its province, and whether the means of regulation chosen are reasonably adapted to the end sought."

See also: *Sproles* v. *Binford*, 286 U. S. 374, 389-390 (1932); *California* v. *Thompson*, 313 U. S. 109, 115-116 (1941).

Several of the cases cited and quoted above involved restrictions upon the weight and width of vehicles permitted on the state highways, restrictions involving a far greater burden in interstate commerce than the regulation relating to advertising signs.

The enactment of the Federal Motor Carrier Act does not curtail the power of the states to adopt such legislation except in so far as the state laws are in direct conflict with the federal law. This is so even with regard to carriers which come under the federal act. *Maurer* v. *Hamilton*, 309 U. S. 598 (1940); *Thompson* v. *McDonald*, 95 F. 2d 937 (5th Circ., 1938), affd. 305 U. S. 263 (1938). Obviously this is so in the case at bar where the appellant apparently is not subject to the Federal Motor Carrier Act.

Even where the Motor Carrier Act grants the Interstate Commerce Commission a specific power to adopt a regulation, a state may act until the federal regulation is actually adopted and effective. Thus in *Welch Company* v. *New Hampshire*, 306 U. S. 79 (1939) it was held that, despite the statutory grant of power to the Interstate Commerce Commission to adopt requirements with respect to "maximum hours of service or employment" of motor carrier employees, state legislation fixing maximum hours was valid and applicable to an interstate carrier until an Interstate Commerce Commission regulation dealing with hours of service was adopted and took effect.

The basic principle of the *Welch* case has been applied to many other fields of federal regulation. We cite but a few examples: *Terminal Railroad Association* v. *Brotherhood of Railroad Trainmen*, 318 U. S. 1 (1943); *Kelly* v. *Washington*, 302 U. S. 1 (1937); *Savage* v. *Jones*, 225 U. S. 501 (1912).

(2)

The appellants rely heavily on *Adams Express Co.* v. *New York*, 232 U. S. 14 (1914). That case involved license fees imposed on an interstate carrier. The fees had no

relation to the cost to the municipality of local supervision or to the extent of the carrier's intrastate business. The Court pointed out that the license fees could not be considered as a regulation in the interest of safety in street traffic. It was simply a tax on interstate commerce, and, therefore, invalid.

Nor is *Morgan* v. *Virginia*, 328 U. S. 373 (1946) determinative of the case at bar. The legislation involved in that case was not designed to promote traffic safety. It sought to extend racial segregation to interstate vehicles. This Court pointed out that validity must be determined "as a matter of balance between the exercise of the local police power and the need for national uniformity in the regulation for interstate travel" (p. 386). On the basis of that test the Traffic Regulation should be sustained. A glance at any of the statistics dealing with traffic casualties reveals the compelling necessity for action aimed at reducing traffic hazards. On the other hand, it is difficult to discover any great need for national uniformity in advertising or vehicular advertising. Neither national travel nor interstate transportation of goods is affected by the local regulation. It is only advertising having no relationship to such travel or transportation that is affected.

It is noteworthy that in the case of *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761 (1945), a railroad case upon which the appellants place much stress, this Court emphasized the difference between regulation of railroads and regulation of traffic on the highways, stating that in the latter field the states have far more extensive control (325 U. S. at p. 783).

(3)

Assertions are made that the burden imposed on interstate commerce by the New York City regulation is an extreme one. So far as the appellants are concerned precisely the opposite is true. A requirement that advertising signs be removed from the sides of vehicles moving in

or through New York City is far from being as onerous as one which denies the highways of the state to interstate vehicles which exceed state imposed weight or width limitations.

Moreover, the Railway Express Agency vehicles affected are not vehicles which move through various states. Technically, it is true, they are engaged in interstate commerce. Essentially, however, their course of travel is confined to New York. Testimony on behalf of the appellants established that there are 1,900 trucks of the Railway Express Agency which are used in New York City (R. 52, 54). These trucks do not leave New York City except to go to terminals in New Jersey (R. 54). These terminals are located at rail heads in Communipaw, Erie, Lackawanna, and West Shore on the New Jersey shore opposite New York City (R. 48).

Thus, while the articles carried by the trucks come from or go to all parts of the country, the trucks themselves travel only in New York City and across the Hudson River to terminals on the New Jersey shore. Therefore, the argument that different states and localities may impose varying requirements relating to vehicular advertising signs and thereby burden interstate commerce is scarcely available in the case at bar. In any event, a similar argument was advanced in the cases involving restrictions on the weight and width of trucks, and it was rejected by this Court.

(4)

Nor is there any need to deal at length with the view that somehow the appellants' contentions based on the commerce clause are strengthened by the fact that the contracts for the carriage of goods involve interstate commerce. In *Western Live Stock* v. *Bureau of Revenue*, 303 U. S. 250 (1938), this Court said (p. 253):

> "That the mere formation of a contract between persons in different states is not within the protection of

the commerce clause, at least in the absence of Congressional action, unless the performance is within its protection, is a proposition no longer open to question."

See also: *Packer Corporation* v. *Utah*, 285 U. S. 105 (1932). Cf. *Stephenson* v. *Binford*, 287 U. S. 251, 274 (1932).

CONCLUSION

The judgment should be affirmed.

New York, N. Y., November 26, 1948.

Respectfully submitted,

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